adapted for young students as the one in common use. The great object in practical geography is to connect with the names of the different states and kingdoms of the globe the largest possible number of statistical, political and historical details, in order that when we meet with the name of any country in reading a book or a newspaper, we may immediately have before our minds the most important facts that are generally known or necessary to be known respecting it, or if we have not them already, may know at once where to look for them. This object is best accomplished by distributing the materials under the heads of the different countries, and thus making the name of each the key or index, which naturally suggests those belonging to it to the memory. For the merely scientific purpose of studying geography on the largest scale, the other arrangement might perhaps be preferable, although it is liable even for this purpose to the objection that it leads almost unavoidably to continual repetition, which, by swelling the size of the book, occasions of course a proportional expense to the purchasers.

Although we do not frequently notice works of a merely elementary description, we have felt it our duty to make an exception to our general rule on this occasion; and we do it with the more pleasure in favor of a writer to whom the readers of this journal are indebted for several interesting articles on subjects connected with geographical and statistical science. The work before us is intended immediately for the use of schools; but from its great accuracy and the care with which the materials have been compiled, will also be found for other purposes a very convenient manual.

ART. IX.—*Speeches made in the Senate of the United States, on occasion of the Resolution offered by Mr. Foot, on the Subject of the Public Lands, during the First Session of the Twenty-first Congress.*

The debates of a deliberative body, under a free government, are not always intended to settle particular points or despatch single matters of business, by a close discussion; but very often to produce general impressions, by a free interchange of thought, on a great variety of topics. The debates in Congress are complained of,—we have made the complaint

ourselves,—as unreasonably long, discursive, and wanting pertinence to any matter in hand, which is to be decided, in the result of the debate, or influenced by the mode, in which it is conducted. But the instance now before us will sufficiently illustrate the fact, that a debate may possess the highest interest and really be of great importance, although it may be hard to tell what the subject is, or whether it has any subject.

Till the administration of Mr. Jefferson, it was the custom for each House of Congress to return an answer to the speech of the President, delivered at the opening of the session. In imitation of the British Parliament, from which also the practice of answering the speech was borrowed, it was usual to make this answer the occasion of a miscellaneous debate, on the general policy of the administration. This debate would naturally be as various in its topics, as the message of the President; and be likely to cover at least every contested point of public policy. In this way a debate arose, at the beginning of several sessions of Congress, previous to Mr. Jefferson's administration; which, as no particular point was at issue, and no specific legislative measure in discussion, may have been thought to be a waste of public time, or regarded perhaps as an occasion unnecessarily furnished for drawing into controversy the measures of the executive. By changing the form of the annual communication, from that of a speech to that of a message, the necessity of an answer was precluded. It would also appear, from Mr. Jefferson's letter to Congress, accompanying his message and announcing the change proposed to be made, in the practice of the executive, that there were some circumstances of convenience in Philadelphia, attending the personal communication to Congress of the presidential address, which did not exist in Washington.*

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* As this is a matter, not without interest in the parliamentary history of the country, we subjoin Mr. Jefferson's letter.

'*December* 8, 1801.

'*Sir*,—The circumstances under which we find ourselves at this place, rendering inconvenient the mode, heretofore practised, of making by personal address the first communication between the legislative and executive branches, I have adopted that by message, as used on all subsequent occasions, through the session. In doing this, I have had principal regard to the convenience of the legislature, to the economy of their time, to their relief from the embarrassment of immediate answers on subjects not yet fully before them, and to the benefits thence resulting to the public affairs. Trusting that a procedure founded in

Whatever were the motives, which dictated this change, (an advantageous one upon the whole,) it was wholly nugatory as a measure to suppress miscellaneous debate. The very nature of a representative government, and of free parliamentary bodies draws with it, as we have just intimated, the necessity of such debate. The utmost that can be done, by usage or parliamentary law, is, to impose some slight restraints on the times, at which it may arise, and the extent to which it shall be carried. The very session, when this change took place, in the mode of communicating the executive address, witnessed one of the most discursive political debates, that had ever arisen in Congress, that on the Judiciary. In the history of the session, it is said,

'From this period, the debate assumed the harshest features of party antipathy and prejudice. Few of the following speakers confined themselves to the merits of the question, while many entirely lost sight of them, in the vehemence of their feelings. Whatever of prejudice or of truth, that related to the past, present, or expected measures of the Government, was liberally and tiresomely repeated, until the patience of the House, apparently exhausted, no longer brooked delay.'

And after recording the final vote, on the passage of the bill, this writer adds, 'thus ended this gigantic debate.'*

We have on a former occasion,† considered somewhat at length the circumstances, which give a character to the style of debating in Congress, and will only here repeat the idea, that no effectual limits can be put to the number and length of the speeches, but those, which arise from press of business. Toward the close of each session, much important business passes through its final stages, with very little debate. In proportion as the business of the Union to be transacted by Congress increases, the pressure will begin to be felt earlier in the session; and the days and weeks now wasted on unimportant

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these motives will meet their approbation, I beg leave through you to communicate the enclosed message, with the documents accompanying it, to the honorable the House of Representatives, and pray you to accept for yourself and them the homage of my high respect and consideration.

TH: JEFFERSON.

The Honorable the Speaker of the House of Representatives.'

* History of the last session of Congress, which commenced December 7th, 1801. p. 70.

† North American Review for October, 1827. Art. VIII.

topics, at its commencement, will be redeemed to assiduous legislation.

The debate in the Senate of the United States, at the last session of Congress, was every way remarkable; and for the importance of the nominal subject under consideration, the wide range of the general discussion, the number of the speakers, the ability of many of the speeches, and the transcendent power of that, which gives the chief notoriety to the debate, stands unsurpassed in interest, in our parliamentary annals. It would be foreign from the character of this journal, to take sides in those parts of this discussion, which were of a partisan character; but having from the foundation, devoted a portion of our pages to the discussion of very grave topics of elementary politics and constitutional law, we have judged it not improper to submit to our readers, those views, which have presented themselves to us, in the general reconsideration of this controversy. It would perhaps be self-deception to say, that we do this, *sine irâ aut studio, quorum causas procul habemus;* but, if we do not mistake ourselves, we do it with feelings, whether of favor or aversion, far beyond the range of ordinary party excitement; feelings chastened with the most solemn persuasion, that the welfare of this country, the happiness of our children to the end of time, and the cause of free government and liberty, throughout the world, are at stake, in the decision of the controversy carried on during the past winter in the Senate of the United States.

The occasion which led to the debate,—its ostensible subject,—is one of importance undeniably great, and on this we shall first say a few words. It is calculated, that the entire superficies of the States and Territories organized into the Federal Union, and of the vast region west of them to the Pacific, subject to the Federal Government, amounts to more than fourteen hundred millions of acres. Of this vast extent of country, the ultimate right of soil to one thousand and sixty-five millions of acres is still vested in the United States,—while the superficies of the States and Territories, as owned by the States or their citizens, amounts to less than three hundred and fifty millions of acres. It is true that, at present, these three hundred and fifty millions of acres, in which the United States have no right of soil, are geographically and physically of vastly greater importance than the thousand millions, which constitute the public domain. But with every year, or rather with every

hour, the relative importance of the two portions of the country is changing; and when it is considered that within the portion, of which the right of soil is in the United States, are comprehended a large part of the States of Alabama and Mississippi, and a very great portion of Indiana and Illinois, east of the Mississippi, and almost the whole of the region west of it; it requires no very prophetic spirit to perceive, that whether surveyed in its economical or its political connexions, this question of the public domain of the country is prodigiously momentous.

There is a circumstance too, which makes it as delicate as it is important. There are about one hundred and seventy millions of acres of this land (including that to which the Indian title has not been extinguished) in the States of Ohio, Indiana, Illinois, Mississippi, Alabama, Louisiana, and Missouri; and there are about eighty-five millions of acres (also including those to which the Indian title has not been extinguished) in the territories of Arkansas, Florida, and Michigan, which territories will in the course of time, no doubt, become members of the Federal Union. In this way, we see, that immensely large portions of public domain are included within the limits of the state sovereignties. This circumstance will eventually give to the question of the public lands an interest not less commanding, than that possessed by the question of the Indians at the present day. Some of the States have advanced the claim, that the State Governments have a jurisdiction unshared by the United States, over all persons living within their boundaries;* and the President of the United States has decided, that he has no power to protect the Indian tribes, having treaties with the United States, against the exercise of that jurisdiction, it being in his opinion an essential incident of State sovereignty. In like manner, in several of the States, the claim has been set up, that the States, as an incident of sovereignty, possess the title to the soil of all the lands, not held by individuals, within their limits. No law has been passed, that we know of, by any State, to take possession of the public lands; as laws have been passed by three States, extending their jurisdiction over tribes of Indians, with whom the United States have subsisting treaties. But the State of Illinois has addressed a memorial to Congress, calling for a change in the

* This proposition, however, is obviously groundless in reference even to the free white citizens.

mode of disposing of the public lands, within the limits of that State, and intimating, that if this call is not satisfactorily answered, grave questions will arise; and among them, 'whether in reality the compact, under which the General Government claims these extraordinary powers, is consonant to the rights reserved to the States respectively, by the Constitution of the United States, or has in any wise been granted by that instrument; and finally, *whether the tenure, by which they hold the public lands, is valid and binding on the new States.*' The memorial, from which we quote this passage, bears no date, but was presented to the Senate of the United States, on the second day of February, 1829. The Governor of Illinois, Mr. Ninian Edwards, had, in a message to the Legislature of that State, (as we have understood,) questioned in strong terms the title of the United States to the public lands, within the limits of the States. Notes to the same effect, but uttered with various degrees of confidence and authority, have been heard from two or three other States, both at home and on the floor of Congress. But Indiana alone, we believe, has undertaken to decide the question. On the ninth of January, 1829, that State adopted a resolution by all the branches of its government, in the following terms: 'Resolved by the General Assembly of the State of Indiana, that this State, being a sovereign, free, and independent State, has the exclusive right to the soil and eminent domain of all the unappropriated lands within her acknowledged boundaries, which right was reserved to her by the State of Virginia, in the deed of cession of the North Western Territory to the United States, being confirmed and established by the articles of confederation and the Constitution of the United States.'

It must be confessed, that this doctrine has found no great favor as yet in Congress. In his speech on the New-Orleans Road Bill, delivered in the House of Representatives last winter, Mr. Archer, of Virginia, having spoken, in the severest terms, of the insolence of injustice in the project of distributing the proceeds of the sales of the public lands in some rateable proportion among the States, and having observed that, 'coming as it did from a quarter, in which no cession of lands had ever been made, it might be supposed to labor under some defect of modesty, he added,

'It stood entirely acquitted, however, upon this score, by comparison with another, having reference to the same subject of

lands. He alluded to the claim advanced recently in some of the new States, to the property of the whole of the public lands, comprehended within their respective limits, as a result of the character of sovereignty, which the United States had conceded to them, with this very condition annexed, of the reserve of this very property. A relation of war, between States, exposed *to seizure and forfeiture the property of either within the reach of the other.* A relation of the closest amity,—of incorporation into a common political community,—operated the same effect, according to the principle of the doctrine alluded to!"

Not less decisive is the censure of this doctrine, pronounced by a select committee of the House of Representatives, two years ago.* In their report on the subject committed to them they make use of the following (rather unduly severe) language:

'Encouraged by the success of these applications, several of the new States have now boldly *demanded* of Congress the surrender of the lands within their limits, although the sovereignty and right of soil were obtained by the treasure, or won from the Indians by the blood, of the citizens of the old States. These new States have affected to assert a right to what they, however, come before Congress to have awarded them by concession. Your committee will enter into no argument on the subject. These demands, the committee are disposed to believe, have been rather the acts of certain individuals, than the deliberate expression of the people at large. The patriotism of the citizens of the old States, who voluntarily conceded these lands to the *Union*, might here be placed by the committee in strong contrast with the want of that feeling in the citizens of the new States, who could seriously demand from the Union the surrender of all this invaluable property *to them alone.* But if any States have, in reality, an unhallowed desire *to get*, it may be useful to them to reflect that the other States have the power *to keep*, and that it is the *duty* of the representatives of these to know that if the national property is parted with, it is parted with only for the *general* advantage.'

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* This committee was raised on motion of Mr. James S. Stevenson, of Pittsburgh, and consisted, besides himself, of the following gentlemen: Mr. Earl, of New-York; Mr. Rives, of Virginia; Mr. Reed, of Massachusetts; Mr. Gale, of Maryland; Mr. Muhlenberg, of Ohio; and Mr. Gilmer, of Georgia. We have heard the report of the committee ascribed to its chairman, Mr. Stevenson. A large number of copies of it was ordered for distribution by the House of Representatives.

We have perhaps gone far enough to show, that this is a subject of great delicacy as well as importance.

It is not our intention, at present, to go into a detailed discussion of the subject of the public lands; we may perhaps do that on another occasion. We wish only to make such further statements respecting it, as will illustrate the origin of the debate in the Senate, at the last session.

The public domain of the United States has been acquired chiefly by the cessions made to the Union by the old States, at the close of the revolutionary war; by the Louisiana purchase; and by the Florida treaty.

The peace of 1783 found the United States of America in possession of large tracts of unsettled country, to which several of the States respectively had already put in a claim of exclusive ownership, as being within their chartered limits. This right was strenuously contested by some of the States, possessing no lands in that condition; particularly New-Jersey and Maryland, and more especially the latter, which, on this ground, refused to accede to the confederation till 1781. The reader, who would understand the question of the right of the separate States to the unoccupied lands within their limits, would do well to read the instructions of the Maryland delegates to the Continental Congress, laid before that body, 21st May, 1779.* This controversy was happily quieted by acts of cession to the United States of the lands in question, executed by those States which had preferred claims to an exclusive title. In this magnanimous policy New-York led the way by an act of cession of 1st March, 1781. Virginia followed on the 1st of March, 1784; Massachusetts on the 19th April, 1785; Connecticut on the 13th September, 1786. By these various acts of cession the United States acquired the title to the territory north-west of the Ohio; being the territory out of which have since been formed the States of Ohio, Indiana, and Illinois, the territory of Michigan, and an extensive region west of it, which will probably be soon organised under a separate territorial government. The claim of the State of Virginia covered nearly the whole of this region; that of the other States enumerated was limited to a part. These claims had their origin in the royal charters, which extended the bounda-

* Secret Journal of Congress for Domestic Affairs, p. 433.

ries of the several colonies from sea to sea, at a time when the geography of the country was so little understood, that the same region was granted to different colonies, by their contemporaneous or successive charters. Connecticut alone, in making her cession, reserved a tract of land, in the north-western part of Ohio, still popularly known as the 'Connecticut or Western Reserve,' which was afterwards ceded to the United States, on the 30th May, 1800; and by the United States to Ohio.* The sales by Connecticut of the lands in the district thus reserved, laid the foundation of her school fund.

Great reliance was had, during the revolutionary war, and under the old confederation, upon the public lands, as a resource for paying the debts contracted in the course of the revolution, and furnishing a permanent supply to the treasury. It is obvious, however, that the extent, to which these lands could contribute to any financial purpose, must depend on the progress of emigration and settlement; and these were seriously retarded by the inexecution of the British treaty; the hostile temper of the north-western Indians; and the troubles with Spain, relative to the navigation of the Mississippi. The indissoluble connexion of the progress of settlement, with the financial product of the land, would seem of itself to demonstrate the absurdity of some of the charges made on the Atlantic States, and particularly those of New England, in the course of the debate in the Senate last winter. Two of these charges were—the one, that these States looked, with an avaricious eye, to the public domain in the West, merely as a source of pecuniary benefit; and the other, that they endeavored to cripple the growth of the West: charges of which it may be enough to say, at present, that they are inconsistent with each other. We may only add here, that of the leading statesmen, who have recommended measures of that class, which has been construed into hostility to the West, General Washington and Mr. Jefferson are the most distinguished. Mr. Jefferson proposed to stock upper Louisiana with Indians, to serve, in his own language, as a *marechaussée*, to retard the emigration of the citizens of the United States, till the region east of the Mississippi was

* Report of the committee to whom was referred the consideration of the expediency of accepting from the State of Connecticut, a cession of jurisdiction of the territory west of Pennsylvania, commonly called the Western Reserve of Connecticut, 21st March, 1800.

filled up. General Washington urged the opening of artificial communications between the Atlantic and the Western States, partly, on the ground, that it would prevent the commerce of those states from descending the St. Lawrence and the Mississippi,—both of which, at that time, had their outlet in the dominions of foreign powers.

Prior to the adoption of the Federal Constitution, very limited sales were made of the public lands. Three tracts were sold by special contract. The first was 'The Triangle,' so called, a tract of land on Lake Erie, west of New-York, north of Pennsylvania, and east of the present State of Ohio; which was comprehended in the cessions to the United States, made by New-York and Massachusetts. This tract was ceded to the State of Pennsylvania on the 4th of September, 1788. It consisted of 202,187 acres, and the sum of 157,640 dollars was received for the sale of the lands. The second sale, prior to the Constitution, was that made to the 'Ohio Company,' of a tract of land on the Ohio and Muskingum rivers, originally intended to include about two millions of acres, but afterwards reduced, by the consent of the parties, to 964,285 acres. The price of these lands was two thirds of a dollar per acre, receivable in evidences of the public debt. The Ohio Company was formed by Winthrop Sargent and Manasseh Cutler, and commenced the settlement of the State of Ohio, then a wilderness uninhabited by civilised man, and now containing a population probably amounting to a million. The third of these sales was also in Ohio, to John Cleves Symmes, of the tract of land between the Great and Little Miami rivers. This sale, originally of one million of acres, was reduced by an alteration of the contract, and subsequently by a failure to perform its conditions, to 248,540 acres. On the lands purchased under this contract, were made the first attempts, which proved wholly successful, (though not the first in point of time,) to settle the territory north-west of the Ohio.

Bounty lands having been promised, by the Continental Congress, to the officers and soldiers of the continental army, it became necessary, as early as possible, to redeem that pledge. The controversies between the States and the United States, relative to the soil, retarded for some time the fulfilment of this purpose. On the 20th May, 1785, an ordinance was passed, for ascertaining the mode of disposing of lands in the Western territory, and this was the first act of general

legislation on the subject. The system commenced by that act underwent several changes, but in some important features, it resembled the system now existing.* Under this system, very limited sales were made, amounting in the whole to not more than 121,540 acres, viz. 72,974 acres, at public sale in New-York, in 1787, for 87,325 dollars, in evidences of the public debt; 43,446 acres, at public sale at Pittsburgh, in 1796, for 104,427 dollars; and 5,120 acres at Philadelphia, the same year, for two dollars an acre. In the year 1800, on the 10th of May, an act was passed, laying the foundations of the present land system. It has received many modifications at subsequent periods; particularly in 1820, the very important modification of substituting cash sales for the credit system, and reducing the price to $1,25 per acre. This act itself was amendatory of one which had been passed in 1796.

Under this act, the substantial features of the land system of the United States are as follows. All the lands are *surveyed by the Government*, before they are offered for sale; and this is the great improvement in the land system of the United States, over that of Virginia in apportioning her military bounty lands, which were picked out and surveyed by individuals receiving warrants, and thus subject to conflicting claims, productive of interminable legislation. The lands of the United States, as surveyed, are divided into townships of six miles square; and these are subdivided into thirty-six sections a mile square, and containing 640 acres. The dividing lines run according to the cardinal points, and cut each other at right angles, except where navigable rivers or an Indian boundary creates what are called fractional sections. The superintendence of the surveys is committed to five principal surveyors. One thirty-sixth part of the lands surveyed, being section number 16, in each township, is reserved from sale for the support of schools in the township; and other reservations have been made for colleges and universities. All salt springs and lead mines are also reserved, subject to be leased by the President. All lands not reserved are, under proclamations by the President issued from time to time to that effect, offered for sale at public sale, for cash, in tracts not less than a half quarter section, or eighty acres, and at the minimum price of one dollar and twenty-five cents per acre. Lands not sold at

* Land Laws, new edition, p. 349.

public sale are thenceforward subject to entry, at private sale, at the minimum price.* In addition to the fundamental principles of the land-law, numerous special laws have been passed, granting the right of pre-emption (that is, a prior right of entry at private sale), to the actual settler. But this and all other provisions of the law for the benefit of the actual settler have, in some districts, been rendered almost nugatory by unprincipled combinations of land speculators, who purchase the lands at public sale, at the minimum price, and then compel the actual settler to purchase of them, at an enhanced valuation. On the whole, the public obtains, on an average, little, if any thing, above the minimum price, although not a little of the land sold is of the best quality and worth several dollars per acre. Such lands are generally pre-occupied by intruders; and if not purchased of the government, at the minimum rate, by the land speculators just alluded to, the settlers themselves, by mutual agreement, forbear to bid on each other.

It appears that up to the present time about one hundred and fifty millions of acres of the public lands have been surveyed. Of these, thirty millions have not been proclaimed for sale; eighty millions have been proclaimed, but remain unsold; twenty millions have been sold, and as much more granted by Congress for education, internal improvement and other purposes. There are then one hundred and ten millions of acres surveyed but not sold; eighty millions of which are in the market, ready for entry, at the minimum price, at private sale; and thirty millions subject to be proclaimed for sale, whenever there is a demand. The annual expense of surveys, as they have hitherto been conducted, is sixty or eighty thousand dollars per annum, according to the statement of Mr. Foot, in his speech on the resolution moved by him.

And this brings us more particularly to that resolution, which was offered on the twenty-ninth of December last, and expressed in the following terms: 'Resolved, that the Committee on Public Lands be instructed to inquire into the expediency of limiting, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale and are subject to entry at the minimum price, and also

* Most of the facts here stated may be found in Seybert's Statistical Annals; and in the new edition of the Land Laws, an excellent compilation, executed under an order of the House of Representatives, by the clerk of that body, M. St. Clair Clarke, Esq.

whether the office of Surveyor-General may not be abolished without detriment to the public interest.'

When this resolution was taken up on the following day, it was opposed, on the ground that it was a part of a systematic policy for crippling the growth of the West, which had been pursued for forty years. That no such policy ever existed was, we think, satisfactorily shown, in the course of the debate that ensued, particularly by Mr. Sprague of Maine, in answer to Mr. Benton.

After the resolution had been debated, at no great length, for a day or two, in the form, in which it was originally offered, Mr. Woodbury moved an amendment to it, which went to reverse its character, and change it into an inquiry into the expediency of hastening the sales and extending more rapidly the surveys of the public lands. This proposition was variously opposed and sustained, till, on motion of Mr. Sprague and by consent of Mr. Foot, the original resolution was combined with the proposed amendment, and the inquiry was to be alternative, as to the expediency either of extending the surveys and hastening the sales, or suspending the surveys and abolishing some of the land-offices, as recommended by the late commissioner of the general land-office.

Thus far the resolution had encountered a fate not uncommon with resolutions of inquiry. It was probably brought forward without any plan on the part of the mover to pursue it vigorously to any act of legislation. It was debated, at no great length, chiefly on its merits, with the ordinary admixture of topics of present party interest. It received such modifications as prevented the Senate from being pledged by its adoption to any policy with regard to the public lands. It was then in a state to go to the committee and receive such destiny, as they might please to give it, most probably that of a statistical report, condensing into moderate compass the most important information on the subject of the surveys and sales of the public lands, and recommending such resolutions as the majority of the committee should agree in, and which, when reported, would have gone to rest on the table of the Senate. We do not make these remarks from any purpose of disparaging the resolution. It is the course, which the majority, we apprehend, of the resolutions of inquiry moved in either house are intended, or at least expected to take, when moved.

In this state of things, Mr. Hayne of South Carolina ad-

dressed the Senate on the subject. We find the following abstract of his remarks, in a pamphlet edition of his Speech and the Second of Mr. Webster, published at Boston.

'Mr. Hayne, of South Carolina, now rose and said, that to oppose inquiry was not necessarily an unparliamentary course. Where information was really wanted or a policy questionable, it was proper to send the subject to a committee; but where there was full knowledge and fixed opinions, inquiry was neither necessary or proper. He concurred with the gentleman from Missouri, that it could never be right to *inquire into the expediency of doing a great and acknowledged wrong*. There were two great systems and two great parties in relation to the settlement of the public lands. One system was that which we had pursued, of selling the land at the highest price. Another was that of Great Britain, France, and Spain, of granting their lands for a penny or a peppercorn. He described the opposite results of these systems. That of the United States produced poverty and universal distress, and took away from the settler all the profits of labor. It drained the new States of all their money in the same manner as the South, by the operation of the tariff, was drained to enrich more favored sections of the Union. The South could sympathise with the West. If the opposite system had been pursued, who could tell how much good, how much improvement, would have taken place, which has not, in the new States? The important question was as to the future. He did not wish for a permanent fund in the treasury, believing it would be used for corruption. If he could, with the wave of a wand, convert the capitol into gold, he would not do it. But there was another purpose to which it was supposed the public land could be applied; viz. so as to create and preserve in certain quarters, a population suitable and sufficient for manufacturing establishments. It was necessary to create a manufactory of paupers, and these would supply the manufactories of rich proprietors, and enable them to amass great wealth. This doctrine was broached by the late Secretary of the Treasury.

'The lands were pledged for the public debt. This would be paid in three or four years. He was in favor of a system, which looked to the total relinquishment, at that time, of the lands to the States in which they lie, at prices, he would not say nominal, but certainly so moderate, as not to keep the States long in debt to the United States. In the course of his remarks, Mr. Hayne appealed to the gentlemen from the Atlantic States, if it was not true that the whole of their country was parcelled out and settled under the liberal system of Britain, instead of the hard and draining one, which we had hitherto pursued in regard to the

West. Mr. Hayne urged the necessity of distributing the lands to the States, from a regard to State sovereignty and the tendency of such a fund to produce consolidation.

With this speech commenced the great debate; all before was mere skirmish. Mr. Webster, on the following day, replied to Mr. Hayne, in a speech, which has been reported at length. The important topics were the general defence of the policy, which had been pursued by the Government towards the new States, which Mr. Hayne had characterised as severe; the dangerous tendency to the Union of the doctrines current at the South, doctrines to which Mr. Webster thought that sanction was given by Mr. Hayne in some of his remarks; and the injustice of the charge against the Eastern States, that they encouraged the tariff policy with the hostile design of checking emigration to the West. In this part of his speech Mr. Webster maintained, that New England had, from the first, taken an active part in measures favorable to the settlement and growth of the West. Her statesmen introduced the plan of public surveys, and the Ordinance of 1787, the basis of the civil institutions and of the prosperity of the North Western States, was drafted by Mr. Dane, a distinguished citizen of Massachusetts. On this subject he made the following remarks, which it is necessary to quote for the understanding of what follows.

'Then comes, Sir, the renowned Ordinance of 1787, which lies at the foundation of the Constitutions of these new North Western States. We are accustomed, Sir, to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character, than the Ordinance of 1787. That instrument was drawn by NATHAN DANE, then, and now, a citizen of Massachusetts. It was adopted, as I think I have understood, without the slightest alteration; and certainly it has happened to few men, to be the authors of a political measure of more large and enduring consequence. It fixed for ever the character of the population in the vast regions northwest of the Ohio, by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to bear up any other than free men. It laid the interdict against personal servitude in original compact, not only deeper than all local law, but

deeper, also, than all local constitutions. Under the circumstances then existing, I look upon this original and seasonable provision as a vast good attained. We see its consequences at this moment, and we shall never cease to see them, while the Ohio shall flow. It was a great and salutary measure of prevention. Sir, I should fear the rebuke of no intelligent gentleman of Kentucky, were I to ask whether, if such an ordinance could have been applied to his own State, while it was yet a wilderness, and before Boone had passed the gap of the Allegany, he does not suppose it would have contributed to the ultimate greatness of that Commonwealth? It is, at any rate, not to be doubted, that, where it did apply, it has produced an effect not easily to be described or measured, in the growth of the States, and the extent and increase of their population. Now, Sir, this great measure, again, was carried by the North, and by the North alone. There were, indeed, individuals elsewhere favorable to it; but it was supported, as a measure, entirely by the votes of the Northern States. If New England had been governed by the narrow and selfish views now ascribed to her, this very measure was, of all others, the best calculated to thwart her purposes. It was, of all things, the very means of rendering certain a vast emigration from her own population to the West. She looked to that consequence only to disregard it. She deemed the regulation a most useful one to the States that would spring up on the territory, and advantageous to the country at large. She adhered to the principle of it perseveringly, year after year, until it was finally accomplished.

On the subject of a hostility to the West evinced in the tariff policy, Mr. Webster made the following remarks.

'The gentleman alluded to a Report of the late Secretary of the Treasury, which, according to his reading or construction of it, recommended what he calls the tariff policy, or a branch of that policy; that is, the restraining of emigration to the West, for the purpose of keeping hands at home, to carry on the manufactures. I think, Sir, that the gentleman misapprehended the meaning of the Secretary, in the interpretation given to his remarks. I understand him only as saying, that since the low price of lands at the West acts as a constant and standing bounty to agriculture, it is, on that account, the more reasonable to provide encouragement for manufactures. But, Sir, even if the Secretary's observation were to be understood as the gentleman understands it, it would not be a sentiment borrowed from any New England source. Whether it be right or wrong, it does not originate in that quarter.

'In the course of these remarks, Mr. President, I have spoken of the supposed desire, on the part of the Atlantic States, to check, or at least not to hasten, Western emigration, as *a narrow policy*. Perhaps I ought to have qualified the expression; because, Sir, I am now about to quote the opinions of one, to whom I would impute nothing narrow. I am now about to refer you to the language of a gentleman of much and deserved distinction, now a member of the other House, and occupying a prominent situation there. The gentleman, Sir, is from South Carolina. In 1825, a debate arose in the House of Representatives, on the subject of the Western road. It happened to me to take part in that debate; I was answered by the honorable gentleman to whom I have alluded, and I replied. May I be pardoned, Sir, if I read a part of this debate?

'"The gentleman from Massachusetts has urged," said Mr. Mc Duffie, "as one leading reason why the government should make roads to the West, that these roads have a tendency to settle the public lands; that they increase the inducements to settlement, and that this is a national object. Sir, I differ entirely from his views on the subject. I think that the public lands are settling quite fast enough; that our people need no stimulus to urge them thither; but want rather a check, at least, on that artificial tendency to the Western settlement, which we have created by our own laws.

'"The gentleman says, that the great object of Government, with respect to those lands, is not to make them a source of revenue, but to get them settled. What would have been thought of this argument in the old thirteen States? It amounts to this, that those States are to offer a bonus for their own impoverishment, to create a vortex to swallow up our floating population. Look, Sir, at the present aspect of the Southern States. In no part of Europe will you see the same indications of decay. Deserted villages—houses falling to ruin—impoverished lands thrown out of cultivation! Sir, I believe that if the public lands had never been sold, the aggregate amount of the national wealth would have been greater at this moment. Our population, if concentrated in the old States, and not ground down by tariffs, would have been more prosperous and more wealthy. But every inducement has been held out to them to settle in the West, until our population has become sparse, and then the effects of this sparseness are now to be counteracted by another artificial system. Sir, I say if there is any object worthy the attention of this Government, it is a plan which shall limit the sale of the public lands. If those lands were sold according to their real value, be it so. But while the Government continues, as it now does, to give them away, they will draw the

population of the older States, and still farther increase the effect which is already distressingly felt, and which must go to diminish the value of all those States possess. And this, Sir, is held out to us as a motive for granting the present appropriation. I would not, indeed, prevent the formation of roads on these considerations, but I certainly would not encourage it. Sir, there is an additional item in the account of the benefits, which this Government has conferred on the Western States. It is the sale of the public lands at the minimum price. At this moment we are selling to the people of the West lands at one dollar and twenty-five cents, which are worth fifteen, and which would sell at that price if the markets were not glutted." '

Mr. Webster then quoted an extract from his own speech in 1825, in reply to Mr. Mc Duffie, and closed with moving the indefinite postponement of Mr. Foot's resolution.

Mr. Benton of Missouri followed, in reply, on the following day.

'He said, that if it had depended on New England,—he would proclaim it to the world,—not a settlement would have been made in the West. He repeated his arguments in relation to the Spanish treaty, and the non-settlement clause; he said the motive of the North, for acceding to the surrender of the navigation of the Mississippi, was to have Spain take train oil and codfish from us, *id est*, from *New England*. God save us, said Mr. B., from such allies. He joined issue with the gentleman from Massachusetts, as to the benefits conferred by the East upon the West.

'Thursday, January 21. Mr. Chambers, of Maryland, hoped that the Senate would postpone the discussion until Monday, as Mr. Webster, who had taken a part in it, and wished to be present at it, had unavoidable engagements out of the Senate, and could not conveniently attend.

'Mr. Hayne, of South Carolina, said that some things had fallen from the gentleman from Massachusetts, which had created sensations *here*, (touching his breast), from which he would at once desire to relieve himself. The gentleman had discharged his weapon, and he (Mr. H.) wished for an opportunity to return the fire.

'Mr. Webster. I am ready to receive it; let the discussion proceed.

'Mr. Benton, of Missouri, then continued his remarks, denying that the credit of framing the ordinance of 1787 was due to Nathan Dane; it belonged to Mr. Jefferson and the South. Mr. Benton said, that in New England there was a dividing line between the friends of the West, and those who thought it "unbe-

coming a moral and religious people to rejoice at victory.' On one side was democracy; on the other, all that was opposed to democracy; the alliance of the latter party, offered yesterday to the West, he begged leave, in behalf of the West, to decline. On all the questions in which the West had an interest, the South had been its friend; and the North, if not all, at least its leaders, enemies! Massachusetts, who now came forward to offer an alliance, was found, on every question, opposed to generous, magnanimous Virginia.

'Mr. Bell, of New Hampshire, moved to postpone further discussion until Monday, which was negatived—Ayes 13, Noes 18.'

Mr. Hayne then proceeded with his speech in reply to Mr. Webster, which occupied the Senate for two days.

The exordium contained some caustic remarks on the manner in which Mr. Webster had engaged in the debate. In reply to Mr. Webster's allusion to Mr. Dane, as the author of the ordinance of 1787, Mr. Hayne stated that Mr. Benton had disproved that fact; and added, that Mr. Dane was known only to the South as a member of the Hartford Convention. Mr. Hayne insisted that the doctrines now advanced by Mr. Webster, on the public lands, differed from those contained in his speech of 1825, from which Mr. Webster had read an extract the day before. He alleged that the support, which New England had given to the measures of internal improvement, as favorable to the West, had commenced in 1825, and was dictated by political calculations. In reply to Mr. Webster's commendation of the ordinance of 1787 for its prohibition of slavery, Mr. Hayne commented at length on that subject, condemning what he regarded as the spirit and tendency of Mr. Webster's commendation, and denying that slavery was a source of political weakness in a community. In reply to Mr. Webster's remarks on the prevalence of doctrines at the South unfriendly to the Union, Mr. Hayne charged upon Mr. Webster a desire to promote the consolidation of the Government; and declared that the two great parties of anti-federal and federal were those which, under different names, had always divided and still divided the people of this country. Mr. Hayne on this head observed, that the anti-federalists, who came into power in 1801, 'continued *till the close of Mr. Madison's administration in* 1817, to exercise the exclusive direction of public affairs.' Mr. Hayne then commented with severity on Mr. Webster's course in respect to the tariff. In

reference to the prevalence, in some quarters, of doctrines unfriendly to the Union, which had been referred to by Mr. Webster, Mr. Hayne stated that he considered such allusions as an unprovoked attack on the South, and particularly South Carolina, one of whose citizens, Dr. Cooper, was distinctly alluded to; and that he should consequently carry the war into the enemy's territory. This gave Mr. Hayne occasion, after asserting the patriotic conduct of South Carolina in the war of the revolution and of 1812, to endeavor to place in very disadvantageous contrast that of Massachusetts in the last war. In this part of his speech, Mr. Hayne made numerous quotations of documents, touching the proceedings of Massachusetts and the other Eastern States, against the war of 1812, ending with the Hartford Convention.

From this train of reflection, Mr. Hayne passed to the defence of the doctrine, that the several States of the Union, each in its sovereign capacity, have a constitutional right to protect themselves against unconstitutional acts of the General Government. Mr. Hayne, however, observed that as Mr. Webster had not examined this doctrine in detail, he should not, at present, do more than oppose to his authority that of the Virginia and Kentucky Resolutions of 1798 and 1799, and the Virginia Report of 1799: papers known or supposed to have proceeded from Mr. Jefferson and Mr. Madison. From these papers, Mr. Hayne made some extracts. He finally stated, that South Carolina had gone not a step farther than the statesmen of New England, and Mr. Webster himself had gone, in maintaining the right of opposing the embargo and other acts deemed by them unconstitutional. Mr. Hayne ended his speech in the following manner:

'Thus, it will be seen, Mr. President, that the South Carolina doctrine is the republican doctrine of '98; that it was promulgated by the fathers of the faith—that it was maintained by Virginia and Kentucky in the worst of times—that it constituted the very pivot on which the political revolution of that day turned—that it embraces the very principles, the triumph of which, at that time, saved the Constitution at its last gasp, and which New England statesmen were not unwilling to adopt, when they believed themselves to be the victims of unconstitutional legislation. Sir, as to the doctrine that the Federal Government is the exclusive judge of the extent as well as the limitations of its powers, it seems to me to be utterly subversive of the sovereignty

and independence of the States. It makes but little difference, in my estimation, whether Congress or the Supreme Court are invested with this power. If the Federal Government, in all or any of its departments, is to prescribe the limits of its own authority, and the States are bound to submit to the decision, and are not to be allowed to examine and decide for themselves; when the barriers of the Constitution shall be overleaped, this is practically a "government without limitation of powers." The States are at once reduced to mere petty corporations, and the people are entirely at your mercy. I have but one word more to add. In all the efforts that have been made by South Carolina, to resist the unconstitutional laws which Congress has extended over them, she has kept steadily in view the preservation of the Union, by the only means by which she believes it can be long preserved—a firm, manly, and steady resistance against usurpation. The measures of the Federal Government have, it is true, prostrated her interests, and will soon involve the whole South in irretrievable ruin. But even this evil, great as it is, is not the chief ground of our complaints. It is the principle involved in the contest, a principle, which, substituting the discretion of Congress for the limitations of the Constitution, brings the States and the people to the feet of the Federal Government, and leaves them nothing they can call their own. Sir, if the measures of the Federal Government were less oppressive, we should still strive against this usurpation. The South is acting on a principle she has always held sacred—resistance to unauthorised taxation. These, Sir, are the principles which induced the immortal Hampden to resist the payment of a tax of twenty shillings. Would twenty shillings have ruined his fortune? No! but the payment of half twenty shillings, on the principle on which it was demanded, would have made him a slave. Sir, if in acting on these high motives—if animated by that ardent love of liberty which has always been the most prominent trait in the Southern character—we should be hurried beyond the bounds of a cold and calculating prudence, who is there, with one noble and generous sentiment in his bosom, that would not be disposed, in the language of Burke, to exclaim, "You must pardon something to the spirit of liberty!" '

We should the more regret the imperfection of the foregoing sketch of Mr. Hayne's speech, did we not know, that the report of it, revised by himself, has gone into far wider circulation than that of our journal. Our object has been merely to present the connected succession of its topics. It may be proper to remark, that this speech, like that of Mr. Webster,

which followed it, was made in the presence of as crowded and intelligent an assembly, as was ever convened in the United States. The public attention was strongly excited, and the Senate-chamber thronged to overflowing. Mr. Hayne's remarks continued till the arrival of the usual hour of adjournment.

Mr. Webster commenced his reply on the following day. After repelling with severity the personal remarks contained in Mr. Hayne's exordium, Mr. Webster defended himself against the charge of an invidious allusion to slavery, and vindicated the course of the Eastern States generally in reference to that subject. In reply to the observation, that Mr. Dane was known to the South, only as a member of the Hartford Convention, he said, that the journal of that Convention, which *he* had never read, appeared to be now more studied in South Carolina than in New England. He denied that his views on the public lands, as expressed in his speech of 1825, differed from those which he had advanced at the commencement of the debate. He denied that the support of internal improvement, as favorable to the West, began in New England in 1825; and alleged, that when at the peace of 1815, he returned to Congress, he found the system of internal improvement becoming the favorite policy of the country at large, under the auspices of distinguished statesmen from South Carolina, whose lead he followed, though they appeared since to have abandoned the doctrine. He recurred to his views on the subject of consolidation, repeating that he had maintained 'the consolidation of the Union,' which had been recommended by General Washington and the convention which adopted the Constitution, not a consolidation of the Government. Mr. Webster next defended the course which he had pursued in reference to the tariff question; and then replied in general terms to that part of Mr. Hayne's speech, which was devoted to the conduct of the Eastern States during the war of 1812. Having disposed of this and the topics incident to it, the remainder of Mr. Webster's speech was taken up with what has been called the constitutional argument. He laid down the doctrines, which he proposed to contest, in the following terms:

'I understand the honorable gentleman from South Carolina to maintain, that it is a right of the State Legislatures to interfere, whenever, in their judgment, this Government transcends its constitutional limits, and to arrest the operation of its laws.

'I understand him to maintain this right, as a right existing *under* the Constitution; not as a right to overthrow it, on the ground of extreme necessity, such as would justify violent revolution.

'I understand him to maintain an authority on the part of the States thus to interfere, for the purpose of correcting the exercise of power by the General Government, of checking it, and of compelling it to conform to their opinion of the extent of its power.

'I understand him to maintain, that the ultimate power of judging of the constitutional extent of its own authority, is not lodged exclusively in the General Government, or any branch of it: but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the General Government transcends its power.

'I understand him to insist, that if the exigency of the case, in the opinion of any State Government, require it, such State Government may, by its own sovereign authority, annul an act of the General Government, which it deems plainly and palpably unconstitutional.

'This is the sum of what I understand from him to be the South Carolina doctrine. I propose to consider it, and to compare it with the Constitution.'

Mr. Hayne having explained, that the doctrine which he asserted was no other than that of the Virginia Resolutions of 1798, which he cited, Mr. Webster replied,

'I am quite aware, Mr. President, of the existence of the resolution which the gentleman read, and has now repeated, and that he relies on it as his authority. I know the source, too, from which it is understood to have proceeded. I need not say, that I have much respect for the constitutional opinions of Mr. Madison; they would weigh greatly with me, always. But, before the authority of his opinion be vouched for the gentleman's proposition, it will be proper to consider what is the fair interpretation of that resolution, to which Mr. Madison is understood to have given his sanction. As the gentleman construes it, it is an authority for him. Possibly, he may not have adopted the right construction. That resolution declares, *that in the case of the dangerous exercise of powers not granted by the General Government, the States may interpose to arrest the progress of the evil.* But how interpose, and what does this declaration purport? Does it mean no more, than that there may be extreme cases, in which the people, in any mode of assembling, may resist usurpation, and relieve themselves from a tyrannical government? No

one will deny this. Such resistance is not only acknowledged to be just in America, but in England also. Blackstone admits as much in the theory and practice too, of the English constitution. We, Sir, who oppose the Carolina doctrine, do not deny, that the people may, if they choose, throw off any government, when it becomes oppressive and intolerable, and erect a better in its stead. We all know, that civil institutions are established for the public benefit, and that when they cease to answer the ends of their existence, they may be changed. But I do not understand the doctrine now contended for, to be that which, for the sake of distinctness, we may call the right of revolution. I understand the gentleman to maintain, that without revolution, without civil commotion, without rebellion, a remedy for supposed abuse and transgression of the powers of the General Government, lies in a direct appeal to the interference of the State Governments.

'(Mr. Hayne here rose: He did not contend, he said, for the mere right of revolution, but for the right of constitutional resistance. What he maintained was, that in case of a plain, palpable violation of the Constitution by the General Government, a State may interpose; and that this interposition is constitutional.) Mr. Webster resumed: So, Sir, I understood the gentleman, and am happy to find that I did not misunderstand him. What he contends for is, that it is constitutional to interrupt the administration of the Constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form of law, of the States, in virtue of their sovereign capacity.'

Mr. Webster, after these explanations, proceeded to argue the main question. He laid it down, that the Federal Constitution was the creature not of the State Legislatures, but of the people of the United States. If each State were competent to decide the constitutionality of acts of the General Government, different States would decide the same question in different ways, as they had done the question of the tariff, in connexion with which the present doctrines are mainly broached. He referred to the conduct of New England, in reference to the embargo, which was thought unconstitutional by the majority of the people of that part of the country, but submitted to after judicial decision. He inquired whence the States acquired the right which they are alleged to possess; and denied that they possessed it. He maintained that the supreme court of the United States was the tribunal provided by the people of

the United States, for settling questions of the constitutionality of laws; and he denied the power of the individual States to decide these questions. He carried out into its practical consequences an attempt to execute a law of a State, nullifying a law of the United States, and showed that those consequences were treason and civil war; and dwelt, in a brilliant peroration, on the blessings of the Union. The usual hour of the adjournment of the Senate had arrived, when Mr. Webster closed his speech. Mr. Hayne, however, spoke for near an hour in reply, and has since given his speech in a more expanded form. Mr. Webster followed in a brief rejoinder.

Here the debate, as between these two gentlemen, terminated. It is well known, that the discussion was continued for several weeks, and that a large proportion of the members of the Senate took part in it. In its progress, almost every topic of great political interest was brought within its range. The several subjects already mentioned were further discussed, and numerous others were introduced. Many of the speeches were distinguished for learning, ingenuity, and power. To some of them we may perhaps have occasion to refer in the course of our remarks. But it would be manifestly impossible, as it would be aside from our purpose, to pursue the analysis of the debate.

It is scarcely necessary to remark, that, in the progress of the debate, the resolution was effectually lost sight of. At its close it was laid on the table. Since the termination of the session of Congress, a public festival has been held in Charleston, in honor of Messrs. Drayton and Hayne. On this occasion, connecting itself closely with the subject of the debate under consideration, the gentlemen just named addressed the company on the interesting topics in controversy, on which we propose to make some remarks. As the report of these addresses bears evident marks of having received the sanction of their authors, we shall not think it indelicate to allude to them in the residue of this article.

A great excitement has for some time prevailed in a portion of the Southern States of the Union. Several acts of the General Government are the alleged causes of this excitement. Some of these acts are considered as imposing heavy burdens on the Southern States, particularly the tariff laws; others are objects of alarm, as menacing the security of the property held in slaves; and others are condemned as subversive in a general

way of the political system established by the Constitution of the United States, particularly the laws, by which appropriations are made for executing various works of internal improvement. We particularise these three grievances, as being those, which we believe to be considered the most prominent. They are those, which have been specified in several public acts at the South, particularly in a series of resolutions adopted by the Senate and House of Representatives of South Carolina in December, 1827, and presented to the Senate of the United States at the first session of the twentieth Congress. In the following year, a very elaborate Report was made by a special committee of the House of Representatives of South Carolina, accompanied by a protest against the tariff, which was adopted by both branches of the Legislature of that State, and presented by the Senators of South Carolina to the Senate of the United States. This protest has been publicly ascribed to the distinguished statesman, who now fills the office of Vice-President. This last document, after stating the reasons, for which the system of protecting duties is declared to be unconstitutional and oppressive, concludes as follows:

'Deeply impressed with these considerations, the Representatives of the good people of this Commonwealth, anxiously desiring to live in peace with their fellow-citizens, and to do all that in them lies to preserve and perpetuate the Union of the States and the liberties of which it is the surest pledge, but feeling it to be their bounden duty to expose and resist all encroachments upon the true spirit of the Constitution, lest an apparent acquiescence in the system of protecting duties should be drawn into precedent, do, in the name of the Commonwealth of South Carolina, claim to enter upon the Journals of the Senate, their protest against it as unconstitutional, oppressive, and unjust.'

This protest is supposed to express the opinions of a large majority of the people of several of the Southern States,—by whom the system of protecting duties is considered unconstitutional and oppressive.

We believe it may without injustice be stated, that the excitement existing on this subject, is considerably greater in South Carolina, than elsewhere. In that State and in reference to the present grievances, the doctrine has been avowed by numerous individuals collected at public meetings; by respectable citizens on various occasions; and particularly by members of Congress from that State in their places on the

floor, that the several States of this Union possess a constitutional right, when laws unconstitutional and oppressive are passed by Congress, of interposing to arrest the evil. It has been intimated and asserted, that it is the right and duty of the Southern States to interpose in this way on this occasion; and the strongest assurances and menaces have been held out that South Carolina will do it.

We take up this subject with earnestness and in good faith. The discontent exists in a quarter, which we admit to be, in the highest degree respectable. It is encouraged by men of high character and distinguished talent. The burdens complained of are unquestionably believed to exist. The remedy suggested is supported by grave argument, and we shall gravely meet it. We shall say nothing in unkindness, nothing in levity, nothing in anger; although something in sorrow; but every thing in the spirit of union and fraternal feeling. The subject demands and would well admit an ample volume, but we have but a few pages left, and must compress our remarks into some desultory paragraphs.

It is alleged then, that the Southern States, and more especially South Carolina, being much aggrieved by unconstitutional laws of the Federal Government, have a right to interpose and nullify the said laws, and particularly those laws by which duties are laid on imports for the protection of manufactures.

It will readily occur, that the claim of a right of nullifying a law of the United States is somewhat vague and indeterminate in its acceptation. We do not know precisely, what is intended by it; and yet we must fix an idea of what it is, before we can reason for or against it. Mr. Hayne, in his speech at what is called the State Rights' dinner, given at Charleston on the 3d of July, says, 'The mode, in which these principles are to be brought into operation, when a case shall arise to justify their application, is a question concerning which there may exist much difference of opinion, and which it appears to me of no importance to decide.' In his speech 'on the Prohibitory System,' at the last session of Congress, Mr. Mc Duffie said, 'It is not for me to say in this place, what course South Carolina may deem it her duty to pursue in this great emergency. It is enough to say, that she perfectly understands the ground which she occupies, and be assured, Sir, that whatever attitude she may assume in her highest sovereign capacity, she will firmly and fearlessly maintain it, be the consequences what

they may.' And farther on, 'But, Sir, in a case of extreme injustice and oppression, I will not stop to moot points of constitutional construction. I place the right and the obligation of a sovereign State to interpose the shield of its sovereignty between its citizens and oppression on much higher ground.'

It might at first blush be supposed, that Mr. McDuffie was here contending for the great and original right of revolution, a natural right of social man. But as nobody contests this right, and as Mr. Mc Duffie is not wasting his breath in asserting what nobody denies, we must suppose, that he, like Mr. Hayne, refers to some constitutional right, possessed by the State Governments, to protect the citizens of the States against unconstitutional laws of the General Government. But it is plain, that till we know precisely what this alleged constitutional right is, the discussion of it is idle.

Is it a mere right of *protest?* The Legislature of South Carolina, as well as of some other States, has formally protested against the obnoxious laws. Now we think a strong argument could be made against the constitutional right of the legislative branch of a State Government to remonstrate against a law of the General Government. Generally speaking, the constitutional right of remonstrance vests in the constituents or the subjects of a Government. Although the State Legislatures, in 1787—1789, had an agency in the formation of the Federal Government; and at subsequent periods have had, and have an agency, in creating both branches of the legislature and the executive, yet the State Legislatures, as such, are in no sense the constituents or the subjects of the General Government. The State Governments have been and are delegated to perform some acts touching the General Government. But they are not known to the Constitution, in any degree, as the regular depositaries of the constituent power. It may therefore be doubted, as we have observed, whether the State Governments have a constitutional right to remonstrate against acts of a Government, of which they are neither subjects nor constituents. The mere circumstance, that it is very convenient for the State Legislature to proceed on these subjects, by way of resolution, proves nothing. The stronger fact, that the State Legislatures are very apt to form themselves into a grand inquest of the Commonwealth, and express opinions touching the public weal, also proves nothing. Congress also acts by resolution with great convenience, and Congress is the grand inquest of the nation.

But if Congress were to pass resolutions, touching the laws of Virginia, relative to the liability of real estate as security for debt, they would soon be told, that the said laws were constitutionally enacted by the Government of Virginia, which Government was not responsible to Congress.

For these and other reasons, we think the constitutional right of protest on the part of the State Governments questionable. We apprehend inconvenience from the presentation of these protests to Congress. Still, however, if the South Carolina doctrine, (we call it so not invidiously, but for convenience,) went no further than to assert the right of the State Legislatures *to protest* against the acts of the General Government, we should not think it a very serious matter; nor employ our time on this occasion in discussing it.

We cannot suppose it necessary, ourselves, to protest against being thought to encroach on the sacred right *possessed by the people*, to address the Government, either of the State or of the Union. 'The right of the people peaceably to assemble, and to petition the Government for a redress of grievances,' is one of the express guaranties of the Constitution; and were it not stipulated by the Constitution, it would be not the less a right. It is one of those rights, which could not be abandoned by any man, not even for himself. If he promised to-day not to petition against a grievance, he would have a right to petition to-morrow to be released from that promise.

Nor shall we now argue against the various modes in which it has been proposed by individuals, sometimes without responsibility and in a tumultuary manner, that South Carolina should exercise her right of interposition; such as a formal secession from the Union; or the declaration that Charleston shall be a free port. We suppose that no one will contend, that either of these acts would be *constitutional*. They are different modes, by which South Carolina, in an extreme case, would exercise the right of revolution. Supposing either to be done and South Carolina erected into an independent sovereignty, the city of Charleston, if driven by the rest of the State to extremity, would have the same right to constitute itself a separate Commonwealth—a new sovereignty;—and when this had taken place, every citizen and every slave in the city, would have a right, at his peril, if he chose, to make war on the rest of the people, to constitute himself an independent sovereign. But these rights are all natural, not constitutional· and they are

rights, which Constitutions can as little recognise, as they can invalidate. They cannot be taken away, for they belong to our nature. They cannot be recognised by a Constitution, for they dissolve the social compact.

We should be disposed to reason much in the same way on the proposition, that the States, being the parties to the compact, must judge, each for itself, when it is infringed. If by this be meant, that the State Legislatures may express judgments on this subject, it is the case just considered. If it be meant, that the people of each State must judge for themselves, when their rights, as such, are invaded, we do not know that we should contest it. It has been said, by a writer, whom we shall quote more particularly in the sequel, (Mr. Mc Duffie,) that 'the States as political bodies have no original inherent rights.'* We will not now discuss that proposition, although it is very ingeniously stated, and connects itself, we think, with sound views of general politics. But it may, we think, be safely said, that the people of the several States, as such, have very few rights so peculiar, that they alone are the competent judges of their infraction. What right, for instance, has South Carolina, so peculiar, that she alone can judge as a people, whether it is invaded? Still, if the people of South Carolina, as such, have any peculiar rights, we admit, that they alone can judge for themselves of their infraction. But to what does such a proposition amount? Every man, and every body of men, that judges at all, must judge for himself or themselves. Nobody *can* do it for them; it is an act of the judging capacity. A man may follow another's judgment; that is, he may himself judge, that on any subject his friend's opinion is sound. If the doctrine in question, then, mean only that the people of a State can alone form a correct opinion, whether rights peculiar to themselves have been invaded, it is a sound, but exceedingly inconsequential proposition.

But South Carolina is not raising her voice for these metaphysical subtleties. She claims a substantial power, a right *to do* something; but what it is, may not perhaps be matter of agreement among those who agree in the claim.

The following extracts, however, will probably be consid-

* National and State Rights Considered, by 'One of the People,' in reply to 'The Trio.' Charleston. 1821.

ered as stating, in the most authentic form, precisely what the nullification doctrine is. Mr. Hayne, in his second speech, says,

'But what then? asks the gentleman. A State is brought into collision with the United States, in reference to the exercise of unconstitutional powers; who is to decide between them? Sir, it is the common case of difference of opinion between sovereigns, as to the true construction of a compact. Does such a difference of opinion necessarily produce war? No. And if not among rival nations, why should it do so among friendly States? In all such cases, some mode must be devised by mutual agreement, for settling the difficulty; and most happily for us, that mode is clearly indicated in the Constitution itself, and results indeed from the very form and structure of the Government. The creating power is three fourths of the States. By their decision, the parties to the compact have agreed to be bound, even to the extent of changing the entire form of the Government itself; and it follows of necessity, that in a case of deliberate and settled difference of opinion between the parties to the compact as to the extent of the powers of either, resort must be had to their common superior, (that power which may give any character to the Constitution they may think proper,*) viz. three fourths of the States. * * * *

'But it has been asked, why not compel a State, objecting to the constitutionality of a law, to appeal to her sister States, by a proposition to amend the Constitution? I answer, because such a course would, in the first instance, admit the exercise of an unconstitutional authority, which the States are not bound to submit to, even for a day; and because it would be absurd to suppose, that any redress would ever be obtained, by such an appeal, even if a State were at liberty to make it. If a majority of both houses of Congress should, from any motive, be induced deliberately to exercise "powers not granted," what prospect would there be of "arresting the progress of the evil," by a vote of three fourths? But the Constitution does not permit a minority

* We cannot refrain from expressing the opinion, that the doctrine here advanced, as to the extent of the amending power, is wholly unsound; and in its consequences, it is surely open to all the objections urged by Mr. Hayne against the competency of the Supreme Court of the United States, to settle constitutional questions. Suppose three quarters of the twenty-four States should agree in an amendment of the Constitution, limiting the six smallest States of the Union to one Senator each. Would such an amendment be binding? We apprehend no more so, than an amendment made in defiance of the express reservations of the Constitution.

to submit to the people a proposition for an amendment of the Constitution. Such a proposition can only come from two thirds of the two Houses of Congress, or the Legislatures of two thirds of the States. It will be seen, therefore, at once, that a minority, whose constitutional rights are violated, can have no redress by an amendment of the Constitution. When any State is brought into direct collision with the Federal Government, in the case of an attempt by the latter to exercise unconstitutional powers, *the appeal must be made by Congress,* (the party proposing to exert the disputed power,) *in order to have it expressly conferred, and until so conferred, the exercise of such authority must be suspended.*'

The following is the manner in which the doctrine is stated by Colonel Drayton, in his speech at the Charleston dinner :

'Our citizens, suffering under an act, which a great majority of them believe to be unconstitutional, have naturally been led to deliberate on the steps which ought to be taken, under circumstances so critical and momentous. Of the expedients proposed, that which seems most generally to be relied upon, is, through the medium of the Legislature, or of a convention chosen by the people, to nullify the obnoxious law, or in other words, to declare it unconstitutional; and to absolve our citizens from obedience to it, unless a contrary decision should be pronounced by three fourths of the Legislatures of the several States, or by a convention of the people in the same number of States.'

Supposing this to be the definition of the nullifying power, we will first observe, that it wholly fails of the support of the Virginia and Kentucky Resolutions. Those Resolutions, ascribed respectively to Mr. Madison and to Mr. Jefferson, have occupied the front rank in the authorities quoted in favor of the nullifying doctrine. Mr. Hayne, in his first speech, in reply to Mr. Webster, confines himself to this authority; and in his second speech, it is the most prominent topic of argument. Mr. Mc Duffie, in his few observations on the subject, in the speech above cited, appeals to no other authority; and generally speaking, the greatest pains are taken, and the strongest desire evinced, to identify the South Carolina doctrine of 1828, with the Virginia doctrine of 1798.

We repeat, then, that if the South Carolina doctrine be what Mr. Hayne and Colonel Drayton define it, viz. the right of a State to suspend the operation of a law of the General Government, till Congress has procured an amendment of the Constitution,

granting the power to enact such a law, the Resolutions of Virginia and Kentucky give no authority to such a doctrine.*

The Virginia Resolutions were occasioned by the Alien and Sedition Laws; and the second of them is expressed in the following terms:

'That this assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact, to which the States are parties; as limited by the plain sense and intention of the instrument constituting that compact; as no farther valid, than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have a right, and are in duty bound, to interpose for arresting the progress of the evil: and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them.'

This is the authority of the Virginia Resolutions. It goes only to a right of the States, (not, it will be observed, the State Legislatures,) *to interpose to arrest the evil.* This then settles nothing, as to the mode of interposition; and it is very clear, that if it is a constitutional right, it must be exercised in a constitutional mode; and till the contrary be shown, we are bound to suppose that the Virginia Resolution contemplated nothing but constitutional modes of resistance. This is not left to inference. The *seventh* resolution is in the following words:

'That the good people of this Commonwealth, having ever felt and continuing to feel the most sincere affection to their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of other States, in confidence that they will concur with this Commonwealth, in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each, for co-operating with this State in maintaining unimpaired

* We are prevented by want of space from remarking on the extreme inadequateness of the remedy proposed for a case, in which a sovereign State is oppressed by the General Government, viz. that whenever three quarters of the States conspire, the States in the minority must submit. This remedy appears to us open to all the objections made to the ordinary construction of the Constitution.

the authorities, rights, and liberties reserved to the States respectively and the people.'

Here the States are exhorted to concur with Virginia, in declaring the laws unconstitutional. That of itself is no more than a protest, and though in our view of the subject open to exception, a measure, as we have said, not worth contesting. But then the States were also called on by Virginia, to adopt, each of them, 'the necessary and proper measures' for remedying the evil of these laws; and before the Virginia Resolutions can be appealed to, as authority for the South Carolina doctrines, it must be shown, or rendered probable, that among 'these necessary and proper measures' was that of refusing obedience to the law, till two thirds of the States had sanctioned it by an amendment of the Constitution. Is there a shadow of proof or presumption, that this was the fact? On the contrary, there is the strongest proof against it. These resolutions were communicated to the several States, and by many of them resolutions were passed, expressing dissent from the doctrines contained in them. In no one of these resolutions, is there any hint, that such was the purport of the Virginia doctrine; although it would have been natural for the States opposed to Virginia, highly dissatisfied as they were with her course, to represent it in a light as obnoxious as they could, with truth. But the proof does not stop here. In the session of the Virginia Assembly, following that when the resolves were passed, the responsive resolutions of the other States were referred to a committee, and from this committee Mr. Madison made his famous Report, reaffirming the principles of the resolutions of 1798. Toward the close of this Report, he is led to inquire into the objections to the seventh resolution, and on this subject he speaks as follows:

'It is lastly to be seen, whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other States, for co-operating with Virginia in maintaining the rights reserved to the States, or to the people, be in any degree liable to the objections which have been raised against it.

'If it be liable to objection, it must be because either the object or the means are objectionable.

'The object being to maintain what the Constitution has ordained, is in itself a laudable object.

'The means are expressed in the terms "the necessary and

proper measures." A proper object was to be pursued, by means both necessary and proper.

'To find an objection, then, it must be shown that some meaning was annexed to these general terms, which was not proper; and, for this purpose, either that the means used by the General Assembly were an example of improper means, or that there were no proper means to which the terms could refer.

'In the example given by the State, of declaring the alien and sedition acts to be unconstitutional, and of communicating the declaration to the other States, no trace of improper means has appeared. And if the other States had concurred in making a like declaration, supported too by the numerous applications flowing immediately from the people, it can scarcely be doubted, that these simple means would have been as sufficient, as they are unexceptionable.

'It is no less certain, that other means might have been employed, which are strictly within the limits of the Constitution. The Legislatures of the States might have made a direct representation to Congress, with a view to obtain a rescinding of the two offensive acts; or, they might have represented to their respective Senators in Congress, their wish, that two thirds thereof would propose an explanatory amendment to the Constitution; or two thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a convention for the same object.

'These several means, though not equally eligible in themselves, nor probably, to the States, were all constitutionally open for consideration. And if the General Assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other States, a choice among the farther measures that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.'

Here we see what sort of *means* were contemplated. They were, first, *declarations* that the laws were unconstitutional; secondly, *direct representations* from the Legislatures of the States to Congress, to obtain the repeal of the laws; thirdly, *requests to their Senators* in Congress to propose an amendment of the Constitution; fourthly, a concurrence of two thirds of the States to apply to Congress for a convention to amend the Constitution. These are all the measures which Mr. Madison suggests, and he introduces them by saying, that they are all 'within the limits of the Constitution.'

But there are one or two other interesting facts, connected

with these resolutions. Great industry has been exerted to connect the terms *nullifying* and *nullification* with the Virginia Resolutions. Mr. Mc Duffie, in his speech above referred to, after quoting the Kentucky Resolution of 1799, 'a resolution drawn up (he says) by the hand of Thomas Jefferson,'—which we shall presently make probable not to be the fact,—in which resolution, 'nullification by the sovereign States is declared to be the rightful remedy for unauthorized acts of the General Government,' adds, 'the celebrated resolutions of Virginia maintain the same doctrine, in language equally explicit.' We have seen how far short the Virginia Resolutions come of this. But the case is very strong the other way. As those resolutions were originally drafted, the seventh of them set forth, that the Alien and Sedition Acts 'are unconstitutional, *and not law, but utterly NULL, void, and of no effect.*' The words in italics were, on motion of Mr. Taylor, of Caroline, who introduced the resolutions, stricken out, and as appears from the contemporaneous report, without a division.* So far, then, are these resolutions from sanctioning, in explicit language, the doctrine of *nullification*, that, in the only case where the word *null* appeared in them, it was stricken out, by general consent.

We will mention another amendment, which was made in these resolutions on their passage. The third resolution, as reported, ran, 'that this assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact, to which the States *alone* are parties.' This word *alone* was struck out, on the suggestion of Mr. Giles. It had been said, that the *people only* were parties to the compact; and the resolutions declared that the States alone were parties. Mr. Giles said, 'the General Government was partly of each kind;' and on this ground the word *alone* was stricken out.

If the people of the United States are in any degree parties to the compact, it will go very hard with the doctrine of nullification, which rests on the unsound theory, that the States are the only parties; and that the Union is a mere confederacy.

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* Debates in the House of Delegates of Virginia, upon certain Resolutions before the House upon the important subject of the Acts of Congress passed at their last session, commonly called the Alien and Sedition Laws. Richmond. Printed by Thomas Nicolson. 1798. pp. 171, 172.

Mr. Hayne even compares the Constitution to a treaty between friendly sovereigns.

We will say another word of the Virginia Resolutions. We believe they contemplated and inculcate none but constitutional means, and intended to effect nothing but the repeal of the obnoxious laws, in the ordinary course of legislation, or by an amendment of the Constitution. Like the report of 1799 in defence of them, they are couched in temperate language, and breathe nothing but attachment to the Union. At the same time, it must be remembered, that they were the product of heated times. The country was then about equally divided into two parties, already excited, and daily becoming more inflamed in the contest. These resolutions emanated from the distinguished statesmen who led the republican party, then out of office; and who filled its two highest posts, on the change in the administration, which shortly ensued. We appeal,—not to heated partisans, but to candid men of all sides,—whether it is to such a period, and to such movements, that a wise politician would look for the most settled opinions, even of the men who directed those movements. At the same time, we must repeat, that the Virginia Resolutions and Report are written with a coolness and temper truly astonishing, when the time and circumstances are considered,—and worthy, in this respect, of being followed more closely as a precedent, than they have been in South Carolina, by the politicians who think they find a warrant for their doctrines in these resolutions.

These resolutions passed by a vote of one hundred to sixty-three, in the Virginia Assembly; a majority far from overwhelming, on such a question. Among those opposed to them, in the community at large, were some of the brightest names in the catalogue of the friends of State rights. We recommend to the consideration of our readers, and especially of our Southern readers, the following extract from a most valuable pamphlet, the production of a citizen of South Carolina, who does honor to his native State and his country.*

'Patrick Henry, in his last speech against the Constitution, had said, in 1788, (Wirt's Life, p. 297,) "If I shall be in the minority, I shall have those painful sensations, which arise from

* Speech of Thomas S. Grimké, delivered in December, 1828, on the Constitutionality of the Tariff, and the true nature of State Sovereignty. p. 6.

the conviction of being overpowered in a good cause. Yet I will be a peaceable citizen. My head, my hand, and my heart shall be free to retrieve the loss of liberty, and remove the defects of that system, in a *constitutional way*. I wish not to go to violence; but will wait with hopes, that the spirit, which predominated in the Revolution is not yet gone, nor the cause of those who are attached to the Revolution yet lost. I shall, therefore, patiently wait, in expectation of seeing that government changed, so as to be compatible with the safety, liberty, and happiness of the people."

'What Patrick Henry meant by this "constitutional way," is explained in his speech to the people, at the election in 1798; for, although he was then nearly sixty-three, he offered himself as a candidate for the House of Delegates; because he believed the sentiments and conduct of his own Virginia, in relation to the Alien and Sedition Laws, to be unconstitutional, and dangerous. He said to the people,

'"That the late proceedings of the Virginia Assembly had filled him with apprehensions and alarm; that they had planted thorns upon his pillow; that they had drawn him from that happy retirement, which it had pleased a bountiful Providence to bestow, and in which he had hoped to pass, in quiet, the remainder of his days; that the State had quitted the sphere in which she had been placed by the Constitution; and in daring to pronounce upon the validity of federal laws, had gone out of her jurisdiction in a manner not warranted by any authority, and in the highest degree alarming to every considerate man; that such opposition, on the part of Virginia, to the acts of the General Government, *must* beget their enforcement by military power; that this would probably produce civil war; civil war, foreign alliances; and that foreign alliances must necessarily end in subjugation to the powers called in." Mr. Henry, proceeding in his address to the people, asked, "whether the county of Charlotte would have any authority to dispute an obedience to the laws of Virginia; and he pronounced Virginia to be to the Union, what the county of Charlotte was to *her*. Having denied the right of a State to decide upon the constitutionality of federal laws, he added, that perhaps it might be necessary to say something of the merits of the laws in question. His private opinion was, that they were "*good* and *proper*." But, whatever might be their merits, it belonged to the *people*, who held the reins over the head of Congress, *and to them alone*, to say whether they were acceptable or otherwise to Virginians; *and that this must be done by way of petition*. That Congress were as much our representatives as the Assembly, and had as good a right to our confidence. He

had seen with regret the unlimited power over the purse and sword consigned to the General Government; but he had been overruled, and it was now necessary to submit to the constitutional exercise of that power. If, said he, I am asked what is to be done when a people feel themselves intolerably oppressed, my answer is ready:—*Overturn the Government.* But do not, I beseech you, carry matters to this length, without provocation. Wait at least until *some* infringement is made upon your rights, and which cannot otherwise be redressed; for if ever you recur to another change, you may bid adieu forever to representative Government. You can never exchange the present Government, but for a monarchy."—*Wirt's Life of Henry.* pp. 393—395.'

When the resolutions of Virginia were communicated to the other States, they were disapproved in counter-resolutions, by Delaware, Rhode-Island, Massachusetts, New-York, Connecticut, New-Hampshire, and Vermont. We mention these States, as being those whose counter-resolutions are appended to the Virginia Report of 1799. That other States not enumerated did not approve them, we take for granted. That any State responded to them, besides Kentucky, does not appear from any document within our reach. We believe no State but Kentucky concurred. It is stated particularly by Mr. Grimké, in his Speech above cited, page 4, that 'South Carolina took no part in the sentiments and conduct of Virginia in 1798, in reference to the Alien and Sedition Laws.'

It also deserves grave reflection, that whatever sanction the authority of Messrs. Jefferson and Madison might give to the South Carolina doctrine in theory, they give it none in its application. The Virginia Resolutions limit the right of a State to interpose, to cases of deliberate, palpable, and dangerous violations of the Constitution. The all-important question will then recur, is South Carolina now interposing in the case of *such* a violation of the Constitution? And in answer to this question, we find both Mr. Jefferson and Mr. Madison, not only not regarding the tariff laws as unconstitutional, but recommending them, in their highest official acts, from the year 1789 down. It is true that Mr. Jefferson, at a late period of his life, expressed opinions, that deliberate, palpable, and dangerous violations of the Constitution had lately been committed; but the tariff laws were not the acts to which he more particularly referred. In his letter to Mr. Giles, of December 26,

1825, quoted by Mr. Hayne, there is a reference to the tariff laws 'as an indefinite assumption of power over agriculture and commerce,' but in the protest proposed about the same time, for the Legislature of Virginia, in 1825, we perceive no distinct allusion to the tariff. Mr. Hayne observes, that in that protest Mr. Jefferson declares 'the powers exercised by the General Government, in reference to the tariff and internal improvements, to be usurpations of the powers retained by the States, mere interpolations into the compact, direct infractions of it.' Upon looking into that paper, however, we find no certain allusion to the tariff. Internal improvement is the great specified grievance. At all events, we think, no judicious friend of Mr. Jefferson's memory could wish to make it appear, that in 1825, he maintained the tariff laws to be a violation of the constitution. Between such a sentiment and those contained in nearly all his messages and in his letters to Mr. Austin and Leiper, there is too wide a discrepancy, we think, to be reconciled to an honest diversity of opinion, on the same subject, contemplated at different times, under a change of circumstances. As to the Colonization Society, the project which more than any other appears to awaken the sensibilities of the South, Mr. Jefferson was warmly in favor of it, and in reply to the constitutional scruple held, 'that a *liberal* CONSTRUCTION justified by the object would go far, and an amendment to the Constitution, the whole length necessary,' and he leaves the subject '*with his admonition to rise and be doing.*' This is not the language of a man, who thought that the patronage of this society by the general government was a deliberate, palpable, and dangerous violation of the compact.

We will now revert to the Kentucky resolutions of 1798, which are admitted to have been drafted by Mr. Jefferson. In these resolutions, it is stated, that acts of Congress, made in virtue of powers not delegated, are 'unauthoritative, void, and of no force; that to this compact, [the Federal Constitution,] each State acceded as a State, and is an integral party; that the government created by this compact, was not made the exclusive or final *judge* of the extent of the powers delegated to itself; since that would have made its discretion and not the Constitution the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.'

This falls very far short of an 'explicit' avowal of any right of extra constitutional resistance. It authorises in no degree, the assertion, that the measures of redress contemplated by the Kentucky resolutions, went beyond 'the limits of the Constitution,' which Mr. Madison, in his report, declared to be the boundary of those contemplated in *his* resolution of 1798, viz. measures of protest, instruction to Senators, and amendment of the Constitution. It must be remembered, that those opposed to the Virginia and Kentucky resolutions denied the right of the State Legislatures to pass them. This ground was taken by Patrick Henry, as we have seen, in the passage cited from his speech above. To meet such an opinion, the Kentucky resolutions declare it to be the right of the States to select their means of redress; and Mr. Madison, in his report, argues, that before the resolutions can be objected to, it must be shown that the means of redress contemplated, were not within the limits of the Constitution; and then enumerates those we have just mentioned. Farther than this, the Kentucky resolutions of 1798 do not go, and that we do not overstate this matter, will abundantly appear, from the following extract from the able and instructive speech of Mr. Johnston, of Louisiana, on the resolution of Mr. Foot, p. 36.

'I hold in my hand a letter from George Nicholas, of Kentucky, in November, 1798. He was a conspicuous member of the Virginia Convention—an able lawyer and statesman—a distinguished Republican, and a leading and influential man, in the day of the Kentucky resolutions. I read from this letter, to show the views entertained then of the remedy against unconstitutional laws. "If you had been better acquainted with the citizens of Kentucky, you would have known, that there was no just cause to apprehend an improper opposition to the laws from them. The laws we complain of may be divided into two classes, those which we admit to be constitutional, but consider as impolitic, and those which we believe to be unconstitutional, and therefore do not trouble ourselves to inquire as to their policy, because we consider them as absolute nullities. The first class of laws having received the sanction of a majority of the representatives of the peoplé of the States, we consider as binding on us, however we differ in opinion from those who passed them as to their policy; and although we will exercise our undoubted right of remonstrating against such laws, and demanding their repeal as far as our numbers will justify us in making such a demand; we will obey them with promptitude, and to the extreme of our abilities, so long as they continue in force. As to the second class

or the unconstitutional laws, although we consider them as dead letters, and therefore that we might legally use force in opposition to any attempts to execute them; yet, we contemplate no means of opposition, even to those unconstitutional acts, but an appeal to the *real laws* of our country. As long as our excellent Constitution shall be considered as sacred, by any department of our Government, the liberties of our country are safe, and every attempt to violate them may be defeated by means of law, without force or tumult of any kind."'

Thus much for the Kentucky resolutions of 1798. In 1799, it was deemed necessary to revive the subject and reply to those States, which had denied the doctrines of the preceding year; for no State as we have intimated in the Union had acceded to them. Accordingly, on the 14th of November, 1799, a new resolution was passed, in which it is said, that 'the several States, who formed that instrument, (the Constitution of the United States,) being sovereign and independent, have the unquestionable right to judge of its infraction, and, *that a nullification, by those sovereignties, of all unauthorised acts, done under color of that instrument, is the rightful remedy.*'

From this sentence is derived the appellation, which is given to the South Carolina doctrine; and on this sentence rests the claim of the sanction given by the resolutions of Messrs. Madison and Jefferson to that doctrine by that name.

To give assurance to this sanction, the Kentucky resolutions of 1799 are ascribed to Mr. Jefferson. Mr. Hayne, in his speech at the Charleston dinner, says that 'they are generally attributed to Mr. Jefferson;' Mr. Mc Duffie says, 'they were penned by his hand;' and the editor of the Banner of the Constitution, in republishing them, in his paper of 10th April last, together with the Virginia resolutions, gives them jointly the title of 'the Resolutions of Virginia and Kentucky, penned by Madison and Jefferson.' What it is of importance to state thus repeatedly and confidently, it is of importance to state correctly. We do not say that this Kentucky resolution of 1799, (for there is but one of that year,) certainly was not written by Mr. Jefferson; but we say there is a strong probability that it was not. It passed the House of Representatives of Kentucky on the 14th November, 1799. We have a letter of Mr. Jefferson, of the 5th of September, preceding, to Wilson Cary Nicholas, from which we make the following extracts.

'I had written to Mr. Madison, as I had before informed you, and had stated to him some general ideas for consideration and consultation, when we should meet. 1 thought something essentially necessary to be said, in order to avoid the inference of acquiescence;* that a resolution or declaration should be passed, answering the reasons of such of the States, as had ventured into the field of reason; taking some notice too of those States, who have either not answered at all, or answered without reasoning. 2d. Making firm protestation against the precedent and principle, and *reserving* the right to make this palpable violation of the Federal compact the ground of doing in future, whatever we might now rightfully do, should repetitions of these and other violations of the compact render it expedient. 3d. Expressing, in affectionate and conciliatory language, our warm attachment to union with our sister States, and to the instrument and principles by which we are united, &c. * * *

'This was only meant to give a general idea of the complexion and topics of such an instrument. Mr. Madison, who came, as had been proposed, does not concur in the *reservation* proposed above; and from this I recede readily, not only in deference to his judgment, but because, as we should never think of *separation*, but for repeated and enormous violations, so these, when they occur, will be cause enough of themselves. * * *

'*As to preparing any thing I must decline it*, to avoid suspicions, (which were pretty strong in some quarters on the late occasion,) and because there remains still (after their late loss) a mass of talents in Kentucky, sufficient for every purpose. * * How could you better while away the road from hence to Kentucky, than in meditating this very subject, and preparing something yourself, than whom nobody will do it better?'

This letter makes it highly probable, that Wilson Cary Nicholas wrote the Kentucky resolution of 1799, if it is absolutely necessary to suppose that it came from Virginia; it makes it highly improbable that Mr. Jefferson wrote that resolution; and consequently, till proof or stronger presumption to the contrary is produced, there is no ground for quoting the Kentucky resolutions, drafted by Mr. Jefferson, as authority for the term 'nullification.'

But to leave the term and go to the thing, we cannot but express our surprise, that this resolution of Kentucky in 1799, should be thought to hold out a warrant, for the new South Caro-

* Mr. Jefferson means acquiescence in the objections of the other States to the Kentucky resolutions of 1798.

lina doctrine of a right to suspend or annul the action of a law of the General Government. The resolution is limited in terms to a protest, and concludes in that alone, and in the following words:

'That though this Commonwealth, as a party to the Federal compact, will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose, *in a constitutional manner*, every attempt, from what quarter soever offered to violate that compact; and finally, in order that no pretexts or arguments may be drawn from a supposed acquiescence, on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the Federal compact, this Commonwealth does now enter against them its *solemn protest.*'

This South Carolina has done two years since against the tariff laws, (having dropped, from her protest, we know not why, the Colonization Society and Internal Improvements in the list of grievances;) and has thus exhausted the Kentucky precedent. After having thus gone over the ground of these famous resolutions, we again repeat, that they furnish no warrant for any course between the ordinary constitutional courses enumerated, and revolution or separation from the Union; and Mr. Jefferson agreed, on Mr. Madison's suggestion, to withdraw even a vague *reservation* of a future right to *do something*, because *separation* should only be resorted to as the remedy of extreme and often repeated cases of violation of the compact.

Before we quite leave this topic, we would observe, that, in the debate in the Virginia Assembly by which these resolutions were adopted, all idea of force, or of proceeding in an unconstitutional manner, was expressly disclaimed, and by no one more distinctly than by Mr. Taylor, of Caroline, the mover of the resolutions. Extracts from the debate showing this, may be found in Mr. Johnston's speech, page 16; they are here of necessity omitted.

We have already said, that we believe Kentucky and Virginia stood alone in 1798 and 1799, in the matter of these resolutions. It is a period to which our personal recollections do not extend, but we speak in the absence of all evidence that any other State co-operated with them. Mr. Mc Duffie, in his speech last winter, observed, that 'Pennsylvania adopted similar resolutions at a subsequent period,' remarking,

at the same time, we believe, that this was a fact not generally known. If any thing else is alluded to, than the Pennsylvania resolutions in Olmstead's case, we are unacquainted with it. That case is now of general notoriety, and its bearings on this subject are so important, that it ought not to be omitted here.

Before quoting it, we would observe, that one great point in the present controversy, as in that of 1798 and 1799, is the constitutional competence of the Supreme Court of the United States to decide all questions of law or equity, arising under the Constitution and laws of the United States. It is contended, on the one hand, that the Supreme Court is the tribunal provided by the compact to settle the constitutionality of laws. On the other hand, it is maintained, that the province of the Supreme Court is confined to judicial questions, in the ordinary acceptation of that term, and does not apply to matters connected with the sovereignty of the States; and that if it did, *the General Government would be made the judge of its own powers.*

We propose presently to say a few words on this argument (in which we think a fallacy, fatal to the whole doctrine, is concealed); but we will observe here, that, though we admitted in its amplest form, all that the Virginia doctrine of 1798 and the South Carolina doctrine of 1828 contends for, relative to the Supreme Court, it would in no degree strengthen the nullifying doctrine. The Virginia resolutions deny, that the Supreme Court is the sole tribunal competent to decide questions, touching breaches of the compact, and claim that the States must decide for themselves. But what then? A State having decided that a law of Congress is unconstitutional, has a right, according to the Virginia resolutions, to protest against it, to demand of Congress to rescind it, to call on the sister States to concur in these measures, to endeavor to procure a convention, and amend the Constitution, and to instruct its United States' Senators to endeavor to procure an amendment. And if redress is not obtained, what then? Then on the Virginia doctrine comes *separation*, that is, revolution and civil war, if the other States please. This, we say, is the Virginia doctrine of 1798 and 1799. The South Carolina doctrine is, that the State legislatures are rightfully judges of the constitutionality of laws of the United States; and that when one State judges a law to be unconstitutional and nullifies it, its operation is suspended till Congress has procured a ratifica-

tion of it, by an amendment of the Constitution; and that the Supreme Court of the United States is not competent to judge of questions involving State sovereignty.

We proceed now to Olmstead's case, a great and instructive one. This was a case running back historically to the year 1775. The history is too long to be here repeated;* it is sufficient to say, that in 1803, the legislature of Pennsylvania passed a special act, to protect certain persons against a judgment of the Circuit Court of Pennsylvania, in consequence of which and to avoid collision, the proceedings of that court were stayed. On the application of the parties interested, a *mandamus nisi* was issued to Judge Peters, by the Supreme Court of the United States, returnable at the next term. The cause shown by Judge Peters was the act of Pennsylvania, of 1803, directing the Governor to use such means as he might think necessary, for the protection of 'the just rights of the State,' and also to protect the persons and property of the said executrixes of David Rittenhouse, deceased, against any process whatever, issued out of any federal court, in consequence of their obedience to the requisition of said act.' After a masterly review of the case, the Chief Justice decreed a peremptory *mandamus*. This decision of the court was communicated by Governor Snyder to the legislature; and his message was referred to a committee of the Senate of Pennsylvania, which, after a historical deduction of the case, reported the following resolutions, which were adopted. An attempt was made by the Governor to enforce the State act, by calling out the militia, but it proved abortive, and the process of the Circuit Court took effect.

'Resolved by the Senate and House of Representatives of the Commonwealth of Pennsylvania, &c. that as a member of the Federal Union, the legislature of Pennsylvania acknowledges the supremacy, and will cheerfully submit to the authority of the General Government, as far as that authority is delegated by the Constitution of the United States. But whilst they yield to this authority, when exercised within constitutional limits, they trust they will not be considered as acting hostile to the General Government, when, as guardians of the State rights, they cannot

* It may be seen in the 'Whole Proceedings in the Case of Olmstead and others *vs.* Rittenhouse's Executrices, by R. Peters, Jun. Philadelphia, 1809,' and in 5 Cranch, 115.

permit an infringement of those rights by an unconstitutional exercise of power in the United States courts.

'Resolved, that in a Government like that of the United States, where there are powers granted to the General Government, and rights reserved to the States, it is impossible, from the imperfection of language, so to define the limits of each, that difficulties should not sometimes arise, from the collision of powers; and it is to be lamented, that no provision is made in the Constitution, for determining disputes between the General and State Governments, by an impartial tribunal, when such cases occur.

'Resolved, that from the construction the United States courts give to their powers, the harmony of the States, if they resist encroachments on their rights, will frequently be interrupted; and if to prevent this evil, they should, on all occasions, yield to stretches of power, the reserved rights of the States will depend on the arbitrary power of the courts.

'Resolved, that should the independence of the States, as secured by the Constitution be destroyed, the liberties of the people, in so extensive a country, cannot long survive. To suffer the United States courts to decide on State rights, will from a bias in favor of power, necessarily destroy the federal part of our Government; and whenever the Government of the United States becomes consolidated, we may learn from the history of other nations what will be the event.

'To prevent the balance between the General and State Governments from being destroyed, and the harmony of the States from being interrupted,

'Resolved, that our Senators in Congress be instructed, and our Representatives requested, to use their influence to procure an amendment to the Constitution of the United States, that an impartial tribunal may be established, to determine disputes between the General and State Governments; and that they be further instructed to use their endeavors, that in the meanwhile such arrangements may be made, between the Government of the Union and of this State as will put an end to existing difficulties.

'Resolved, that the Governor be requested to transmit a copy of these resolutions, together with the foregoing statement, to the Executive of the United States, to be laid before Congress, at their next session. And that he be authorised and directed to correspond with the President on the subject in controversy, and to agree to such arrangements, as it may be in the power of the Executive to make, or that Congress may make, either by the appointment of Commissioners or otherwise, for settling the difficulties between the two governments.

'Resolved, that the Governor be also requested to transmit a copy to the Executives of the several States in the Union, with a request that they may be laid before their respective Legislatures.'

These resolutions were approved by Governor Snyder on the 3d of April, 1809, and sent in the usual manner, to the several States of the Union. We have before us, in the legislative journals of Pennsylvania, the responses of New Hampshire, Vermont, North Carolina, Virginia, Maryland, Georgia, Tennessee, Kentucky, New Jersey, all in opposition to the proposed amendment, and no one in favor of it. The doings of Virginia are too important to be omitted, and are as follows. We quote them from Note 3, to Mr. Webster's speech.

'The following resolutions of the Legislature of Virginia bear so pertinently and so strongly on this point of the debate, that they are thought worthy of being inserted in a note, especially as other resolutions of the same body are referred to in the discussion. It will be observed, that these resolutions were unanimously adopted in each House.

VIRGINIA LEGISLATURE.

'*Extract from the Message of Governor Tyler of Virginia, December* 4, 1809.

'"A proposition from the State of Pennsylvania is herewith submitted, with Governor Snyder's letter accompanying the same, in which is suggested the propriety of amending the Constitution of the United States, so as to prevent collision between the Government of the Union and the State Governments."

HOUSE OF DELEGATES.

Friday, December 15, 1809.

'On motion, ordered, that so much of the Governor's communication as relates to the communication from the Governor of Pennsylvania, on the subject of an amendment proposed by the Legislature of that State to the Constitution of the United States, be referred to Messrs. Peyton, Otey, Cabell, Walker, Madison, Holt, Newton, Parker, Stevenson, Randolph (of Amelia), Cocke, Wyatt and Ritchie.—*Journal*, p. 25.

Thursday, January 11, 1810.

'Mr. Peyton, from the committee to whom was referred that part of the Governor's communication, which relates to the amendment proposed by the State of Pennsylvania to the Constitution of the United States, made the following Report:

'The committee to whom was referred the communication of the Governor of Pennsylvania, covering certain resolutions of

the Legislature of that State, proposing an amendment of the Constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the States and the Federal Judiciary, have had the same under their consideration, and are of opinion that a tribunal is already provided by the Constitution of the United States, to wit, the Supreme Court, more eminently qualified from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid in an enlightened and impartial manner, than any other tribunal which could be created.

'The members of the Supreme Court are selected from those in the United States, who are most celebrated for virtue and legal learning, not at the will of a single individual, but by the concurrent wishes of the President and Senate of the United States: they will therefore have no local prejudices and partialities. The duties they have to perform lead them necessarily to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and State courts together, and with the admirable symmetry of our Government. The tenure of their offices enables them to pronounce the sound and correct opinions they may have formed, without fear, favor, or partiality.

'The amendment to the Constitution proposed by Pennsylvania seems to be founded upon the idea, that the Federal Judiciary will, from a lust of power, enlarge their jurisdiction to the total annihilation of the jurisdiction of the State courts; that they will exercise their will, instead of the law and the Constitution.

'This argument, if it proves any thing, would operate more strongly against the tribunal proposed to be created, which promised so little, than against the Supreme Court, which, for the reasons given before, have every thing connected with their appointment calculated to ensure confidence. What security have we, were the proposed amendment adopted, that this tribunal would not substitute their will and their pleasure, in place of the law? The Judiciary are the weakest of the three departments of Government, and least dangerous to the political rights of the Constitution; they hold neither the purse nor the sword; and even to enforce their own judgments and decisions must ultimately depend upon the executive arm. Should the Federal Judiciary, however, unmindful of their weakness, unmindful of the duty which they owe to themselves and their country, become corrupt, and transcend the limits of their jurisdiction, would the proposed amendment oppose even a probable barrier in such an improbable state of things?

'The creation of a tribunal, such as is proposed by Pennsyl-

vania, so far as we are able to form an idea of it from the description given in the resolutions of the Legislature of that State, would, in the opinion of your Committee, tend rather to invite than to prevent collisions between the Federal and State courts. It might also become, in process of time, a serious and dangerous embarrassment to the operations of the General Government.

'Resolved, therefore, that the Legislature of this State do disapprove of the amendment to the Constitution of the United States, proposed by the Legislature of Pennsylvania.

'Resolved also, that his Excellency the Governor be and he is hereby requested to transmit forthwith, a copy of the foregoing preamble and resolutions, to each of the Senators and Representatives of this State in Congress, and to the Executives of the several States in the Union, with a request that the same be laid before the Legislatures thereof.

'The said resolutions being read a second time, were, on motion, ordered to be referred to a committee of the whole House on the state of the Commonwealth.

Tuesday, January 23, 1810.

'The House, according to the order of the day, resolved itself into a committee of the whole House on the state of the Commonwealth, and after some time spent therein, Mr. Speaker resumed the chair, and Mr. Stanard (of Spottsylvania), reported, that the committee had, according to order, had under consideration the preamble and resolutions of the select committee to whom was referred that part of the Governor's communication, which relates to the amendment proposed to the Constitution of the United States, by the Legislature of Pennsylvania, had gone through with the same, and directed him to report them to the House without amendment; which he handed in at the Clerk's table.

'And the question being put on agreeing to the said preamble and resolutions, they were agreed to by the House unanimously.

'Ordered, that the Clerk carry the said preamble and resolutions to the Senate and desire their concurrence.

In Senate.

Wednesday, January 24, 1810.

'The preamble and resolutions on the amendment to the Constitution of the United States, proposed by the Legislature of Pennsylvania, by the appointment of an impartial tribunal to decide disputes between the State and Federal Judiciary, being also delivered in and twice read, on motion, was ordered to be committed to Messrs. Nelson, Currie, Campbell, Upshur and Wolfe.

Friday, January 26.

'Mr. Nelson reported, from the committee to whom was committed the preamble and resolutions on the amendment proposed by the Legislature of Pennsylvania, &c. &c. that the committee had according to order, taken the said preamble, &c. under their consideration, and directed him to report them without any amendment.

'And on the question being put thereupon, the same was agreed to unanimously.'

Such was the fate of the Pennsylvania Resolutions. If this is the case, in which Pennsylvania is supposed to have affirmed the Kentucky and Virginia doctrines of 1798 and 1799, it must be admitted that these States, in 1809, made her but a cold return for her concurrence.

We have stated above, that a fallacy, fatal to the argument, is concealed in the proposition, that to allow the Supreme Court to be the exclusive judge of questions of constitutionality, between the General Government and the State Governments, would be to make the General Government, which is stated to be one party to the compact, the judge of its own powers. Mr. Webster, in his final brief rejoinder, pointed out the obvious defect in this reasoning, that, even admitting the theory that the Constitution is a compact, to which the States are parties, the General Government was not the other party, and consequently could not be spoken of as judging of its own powers; but was the form of government created by the various parties; and the question of course is, what is the tribunal provided by this compact, under the form of government established by it, to settle controversies? Supposing this to be the question, and waiving the inaccuracy of speaking of the General Government as one party, there appears to us an obvious fallacy in the argument. The answer to this question is, the Supreme Court of the United States is this tribunal, created by the people of the United States, or, if you please, by the States, to settle disputed points. The Supreme Court is not a tribunal created by the General Government; but with the other branches of the General Government, it is itself the creature (as we say) of the people, or (as South Carolina says) of the States. When therefore the Supreme Court decides a question, it is the people or the States (whichever you please), deciding a question, through the organs, which the people, or the States, have constituted. There is therefore

not the shadow of truth in the proposition, that to make the Supreme Court a judge in controversies between a State and Congress is to make the General Government judge of the extent of its own powers.

The South Carolina doctrine, denying that the Supreme Court is the judge, in constitutional controversies, maintains that each State must judge for itself; and that it is the right of each State to suspend the action of any law, which it deems unconstitutional, till two thirds of the other States have confirmed it. It is said, to be sure, that it must be a case of violation of the Constitution, deliberate, palpable, and dangerous; but as the State is also the sole judge of these conditions, the qualification, as observed by Mr. Webster, comes to nothing.

It is claimed, too, expressly, that this is a constitutional right reserved to the States, and indeed necessarily belonging to an independent State, entering into a federal compact.

It is an obvious objection, then, first, to such a doctrine, that this great organic function, transcending all the constitutional powers of the Government, is not *named* in the Constitution. It would seem that so tremendous a power, clothing Delaware, Rhode Island, or Illinois, with a constitutional right to suspend the operation of a law, which has received the sanction of each House of Congress, of the Executive, and of the Supreme Court, *ought to be expressly named in the Constitution.* That Constitution, (to which South Carolina, either as a State or as a portion of the American people, is a party,) has formally provided, that 'this Constitution and the laws of the United States, which shall be made in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges, in every State, shall be bound thereby, any thing in the Constitution or laws of any State to the contrary, notwithstanding.' Here, however, South Carolina says there is *implied* this proviso, '*Provided*, however, that whenever any State shall deem any law unconstitutional, the same shall be held and taken to be unconstitutional, null, void, and of no effect, until such time as three fourths of the States shall have amended the Constitution, in such manner, as that the aforesaid law shall be constitutional.'

This proviso, it is plain, is, in a few lines, a new form of Government, the incongruity of which, in the mere statement, is so manifest, that we fear we shall scarcely be deemed seri-

ous in arguing upon it. But it is a doctrine which a great, enlightened, polished, patriotic State, is now convulsed to uphold.

We scarce know where to begin with the difficulties that surround it. It comes from politicians who think themselves the enemies of *implied* powers. Let any gentleman, who is disposed to favor this doctrine, put it into words to suit himself, and then point out, in the wildest visions of latitudinarian construction, an implied power, so remote from every granted or specified power, as that which would clothe every State with a standing right to suspend the operation of any and every law, till two thirds of the States had re-enacted it.

But it is said, this is a reserved right. Mr. Hayne, in his second speech, thus expresses himself:

'But I go farther, and contend, that the power in question may be fairly considered as reserved to the States by that clause of the Constitution, before referred to, which provides, "that all powers not delegated to the United States, are reserved to the States respectively, or the people." No doubt can exist, that before the States entered into the compact, they possessed the right, to the fullest extent, of determining the limits of their own powers,—it is incident to all sovereignty. Now have they given away that right, or agreed to limit or restrict it in any respect? Assuredly not. They have agreed that certain specific powers shall be exercised by the General Government; but the moment that Government steps beyond the limits of its charter, the right of the States "to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them," is as full and complete as it was before the Constitution was formed. It was plenary then, and having never been surrendered, must be plenary now.'

And immediately on this assertion of the reserved right of the States, to judge for themselves of the infractions of the compact, follows Mr. Hayne's indication of the *modus operandi*, as already quoted.

We are not quite sure, that to speak of a reserved right to settle constitutional controversies, is not a contradiction in terms. The States undoubtedly possessed certain rights, before the Constitution was formed. Those rights, of course, had no reference to or connexion with the Constitution, which was not in existence. There could be no rights of the States, touching constitutional functions, and the order of enacting and repealing laws, till the Constitution was created.

If it be meant that, under the Confederation, the individual States possessed this right, it is sufficient to say, *first*, that the confederation was abolished by the Constitution, and no part of it retained, except by express provision; and *second*, that, under the old confederation, no *similar* power belonged to an individual State. On the contrary, though the action of the Government of the Confederacy was on the States and not on the citizens, 'every State was bound to abide by the determinations of the United States in Congress assembled, on all questions submitted to them.'

If it be finally meant, by a reserved right, that it is a constitutional right of *every* sovereign State, (for we grant, merely for the sake of argument, that the Constitution is a compact, to which the States *alone* are parties, a theory repudiated by Virginia in 1798) that enters into a constitutional compact, to judge when the acts of the functionaries created by the compact are against its provisions, the unsoundness of the proposition is too evident to be argued. Every constitutional compact of Government made by reasonable men, should provide for a tribunal to settle controversies. If this be omitted, (and it is such a *casus omissus* as it would be to omit the reasoning faculty in constituting an intellect,) then, we admit, the parties reserve to themselves the right, severally, of quitting the confederacy in case of disagreement; but this is not a constitutional right; it is a natural right. This is the common law of partnerships. Putting the Union, if you please, merely on the loose footing of a partnership; supposing it to be the slightest connexion in which bodies of men could live or act together; no one ever heard that any single partner could suspend the action of all the rest, till two thirds had consented to a modification or explanation of the articles. The utmost he can claim, is a right to quit the firm. The utmost that South Carolina can claim, is a right to quit the Union. It is the reserved right of separation; and all attempts to point out a middle constitutional course, between this extreme and desperate right and that of ordinary constitutional means of procedure, are labor and ingenuity wasted. That a school of politicians, professedly hostile to *implied* powers, should imply a power like this, goes almost beyond the limits of conceivable self-contradiction.

Again, let us view it on the ground of *State rights*. This new doctrine purports to come from the State Right school,

although we believe it would be rather difficult, genealogically to deduce its descent from that class of politicians. Be this as it may, it seems but a strange consequence of the doctrine of State rights, that one State has, at all times, a constitutional right to nullify the acts of the other twenty-three. It has lately been publicly proclaimed, by a respectable member of Congress of the South Carolina school, not merely with some air of exultation, but as an example to be imitated by South Carolina, that Georgia has nullified the treaties and the laws of Congress inconsistent with her supposed rights. His words are;

'By a law of the United States, the non-intercourse [intercourse] law, the President was authorised to prevent, by armed force, the intrusion of the whites upon the Indians. Yet, when Georgia became dissatisfied, and justly so, with the conduct of the Government, when she became assured that the Indian titles would never be extinguished, what was her remedy? She abrogated, she nullified the treaty; she reverted to her original sovereign right over her soil; and extended, in defiance of all treaties, of all laws, her own jurisdiction over all persons within her limits. And what was the result? Disunion? No! The tempest did rumble at a distance, but those fearless champions trembled not at its threatenings, and it passed away. Bloodshed? No! The crash of arms was heard—the tocsin of violence was sounded—but Georgia's patriots were ready at their posts; their feet were planted upon her boundary; and their firm and lofty defiance achieved at once what their petitions, remonstrance, and appeals, had for years attempted in vain. They triumphed! Here, then, is a precedent; here was nullification; nullification of a treaty of Congress—of a law of Congress—of the pretended law of the land. This is a precedent familiar to all. It is one on which we may confidently depend.'

Of these treaties several were ratified unanimously by the Senate of the United States; by the Senators from Georgia and South Carolina among the rest. The treaty with the Cherokees of 1817 was negotiated by General Jackson and the Governor of Tennessee, '*as commissioners plenipotentiary of the United States of America.*' It recited the purpose of the Cherokees, who remained east of the Mississippi, 'to begin the establishment of fixed laws and a regular government.' It assured to them 'the patronage and good neighborhood of the United States.' That treaty was unanimously ratified by the

sovereign States of this Union, Mr. Troup, as a Senator from Georgia, voting, on behalf of that State, for the ratification. And yet Georgia, a single sovereign State, has, as has been correctly said by Mr. Barnwell, nullified this act of the other sovereign States. But Georgia, of course, possesses no rights in this matter not possessed by any other and every other State. In other words, it is the right of any State to nullify any treaty or law of the United States, whenever that State (herself being the judge,) shall deem her sovereignty to be invaded, or the Constitution violated, or her reserved rights impaired by the treaty or law. That such a theory of Government should ever be admitted by wise men is marvellous; but that it should be admitted as a State right doctrine is indeed one of the things, of which we are ready to exclaim, *Credo quia impossibile est.*

We profess to be firm and ardent friends of the rights of individual States, and of the rights of individual men. It is to preserve these rights, that Governments are established; and in Governments the will of the majority is taken to be the will of the whole, because the majority contains the greatest number of individuals. The majority—as such—is entitled to no natural preference. The Government is not made for them; it is made for the individuals; it is because the majority consists of the greatest number of minorities, so to say, that it ought to govern. If a vital measure is at stake, and one hundred and one are for it, and ninety-nine against it, it is indeed an unfortunate circumstance, that on vital measures, opinions and interests should be so much divided; and it is common enough to hear it said, that it is hard, that such measures should be carried by slender majorities. But it is surely hard, that they should be carried by no majority at all; that is, that they should be decided against the majority. It is hard that one hundred and one should carry a measure against ninety-nine; but it is surely harder that ninety-nine should carry it against one hundred and one. The rights therefore of the individual, in the long succession of years, and in the infinite variety and crossing of questions, are best secured by the maxim, that the majority shall govern. He can never then be injured or successfully opposed by less than one half; but give to any less number than a majority the right to decide questions, and each individual is liable to be successfully opposed; by a third, a quarter, or a single individual, as the case may be.

So of States, acting as States in a confederacy. Nothing can be plainer than that all provisions, requiring any thing more than a majority, are so many encroachments on the rights of individual States. This is unquestionably a defect in the Federal Constitution. Two thirds of the Senators must concur to ratify a treaty. This is saying in effect, that the chances are nearly as two to one, that every treaty ought to be rejected. Is there any foundation, in political philosophy, for such a notion? A treaty is negotiated; there are forty-eight Senators; thirty-one are for it; seventeen against it; and it cannot be ratified. This is very favorable to the States represented by the seventeen; but how is it to the States represented by the thirty-one? This, however, is the Constitution; it is agreed to; and whether abstractly expedient, matters not now.

But then comes the nullifying doctrine and declares the right not of one third of the States to prevent two thirds from making a treaty, but of a single State to annul a treaty, which all the other States have made. And this is called State rights doctrine! It ought to be called the doctrine, whereby the greatest possible number of sovereign States may in the largest number of cases be prevented from exercising their rights, by the smallest assignable minority.

These are not cases of extreme hypothesis, they are conceivable, nay they are historical cases, cases that may happen, or cases that have happened. Georgia, Alabama, and Mississippi have nullified the intercourse law which is nearly coeval with the Government, and about fifty treaties. It is admitted; it is boasted of, and held up as a precedent to be depended on. Suppose Louisiana should hold with some very eminent politicians, that the Florida treaty gave away part of her territory. That treaty was unanimously ratified. May Louisiana nullify it, and extend her jurisdiction over Texas? Yes, says the nullifying school, and cheers her on to do it. But this is war against Mexico; and when Louisiana is at war with Mexico, what are the United States doing? Are they at peace or at war? If at war, are they at war with Mexico, and with Mexico's ally, Great Britain; whose Minister has lately told us, we shall not buy Texas, far less, we suppose, 'extend our jurisdiction over it,' without buying it?—Are we at a war, too, declared by one State? That is against the letter of the Constitution.

Another case. The last convention with Great Britain submits to arbitration a part of the State of Maine. This conven-

tion was, also, we believe, unanimously ratified by the Senate. Suppose the umpire, the King of the Netherlands, should decide that the disputed territory (being nearly as large as Massachusetts,) does not belong to Maine and Massachusetts, but belongs to New Brunswick. Maine and Massachusetts following the Georgia precedent, and borne out by the Carolina doctrine, decree a nullification of the treaty. What says Great Britain to this? First, she would tell you, that Maine and Massachusetts are no parties to the treaty, and that she looks to you, the United States, to see that it is observed in good faith. Next, she would say, if you do not give us the land in fulfilment of the treaty, we will take it ourselves. The good people of Maine and Massachusetts would bid them 'come and try,' and there again we have war foreign or civil. If the United States support Maine in breaking their own treaty, it is foreign war; if the United States fulfil their treaty, it is civil war with Maine.

But to return to the nullifying of laws, leaving treaties aside. We greatly fear that our brethren in South Carolina have contemplated the doctrine, too much in its application to laws, which are disliked by themselves, and that they have not viewed the matter, in its *principle*. A State, they say, may suspend the operation of an act of Congress, which it deems unconstitutional, till two thirds of the States sanction it by an amendment. At the last session of Congress, a law was passed, providing half a million of dollars to remove the Indians. We believe the voice not of one State, but of half the States of the Union could be obtained, to declare that law unconstitutional, under the circumstances of the case, and deeply injurious to each State, as a violation of the honor of each State pledged by treaty, to these Indians. Now the South Carolina doctrine is, that Massachusetts or Ohio has a right to suspend the operation of this law till two thirds of the States have confirmed it. Would two thirds ever confirm it? Assuredly not. Here then we have Georgia nullifying the treaties with the Indians, and Ohio nullifying the appropriation acts passed to carry into effect the nullification of the treaties.

Massachusetts and several other States, in 1807 and 1808, held the embargo to be unconstitutional, and Mr. Hayne observes, in his second speech, 'that it was right to yield it to honest convictions of its unconstitutionality, entertained by so large a portion of our fellow-citizens.' But this is not quite enough, much

as we honor Mr. Hayne's liberality on this point. Massachusetts deemed it unconstitutional. Could she have instantly suspended it, till Congress had obtained an amendment to confirm it? She did propose to the other States an amendment of the Constitution, providing 'that no law should be enacted, laying an embargo, or prohibiting or suspending commerce, for a longer period than until the expiration of thirty days from the commencement of the session of Congress, next succeeding that session, in which such law should have been enacted.' Nobody joined her in the amendment, out of New England; and Mr. Hayne devotes a whole paragraph in his speech, to show that the *onus* of procuring the amendment ought to lie *not* with the single discontented State, but with the rest of the Union. Massachusetts had then a right to suspend the embargo law according to the South Carolina doctrine, and compel the other States, if they chose to have it, to procure an amendment of the Constitution. This process would, at the least calculation, have lasted a year. What would have become of the embargo meantime? What was said even of those, who advocated its repeal in the ordinary course of legislation? The bare exercise of his rights as a citizen and a member of Congress, to procure this repeal, in conformity with the instructions of his constituents, and the wishes of all New-England, procured from Mr. Jefferson for Judge Story, then a member of Congress, the epithet of *pseudo-republican.*

But we go a step farther. How does the nullifying power bear on the question of a declaration of war. The war measures of 1798 were deemed by the republican party unconstitutional. The Alien Law, which was brought forward by its friends as a war measure, was one of the two laws, which led to the resolutions of Virginia and Kentucky, and was denounced as unconstitutional. The declaration of war, in 1812, was regarded, by the federal party, as unconstitutional, in like manner as the tariff is now held by Carolina to be unconstitutional; that is to say, a law within the forms of the Constitution, but passed for unconstitutional objects. These we need not enumerate; and it is in no degree necessary to inquire into the justice of these opinions. That they existed, we suppose, will not be denied. If then Massachusetts, that is, the dominant party in Massachusetts, believed that the war was declared from attachment to France, antipathy to England, hostility to commerce, or an opinion that 'we should keep our New England

brethren to quarrel with,' all of which was believed by the majority of New England at that day, and which all will allow are motives unknown to the Constitution, then Massachusetts had a right, by the South Carolina doctrine, to nullify the declaration of war, until two thirds of the States had confirmed it.

Again, the vocabulary of reprehension has been exhausted on Massachusetts, for withholding her militia from the General Government, although called out in a manner now *acknowledged* to have been contrary to the Constitution of the United States and of Massachusetts. There is not in the United States of America a man, who will hazard a reputation as a statesman, by saying, that the mode, in which the Massachusetts militia were called out was constitutional: we mean separating the officers from their companies, regiments and brigades. Massachusetts did undertake to nullify the law creating that draft. And what has been the consequence? The annihilation of the political party that recommended that measure; reproach and outrage from their opponents throughout the Union; and the privation of her treasury, for nearly twenty years, of a half a million of dollars, patriotically and faithfully advanced for the public service.

Congress establishes a bank: the President of the United States thinks its constitutionality well questioned, and Tennessee no doubt agrees with him, and does not stand alone. Any State may nullify the charter, till two thirds of the States confirm it. What would the Chairman of the Committee of Ways and Means say to this? Would he quote the Kentucky Resolutions again, to prove that 'a nullification of all unauthorized acts done under color of that instrument is the rightful remedy.'

It is plain farther, that the nullifying power already maintained to extend to treaties and laws, may apply to every other function of the government; to executive and to judicial acts. The President has power to fill vacancies, which occur in the recess of the Senate. He may consider vacancies occurring by removal as within the purview of the Constitution. He may remove collectors of the customs in the recess, and appoint others, to reward his friends. The people of a State may deem such a course unconstitutional. By the South Carolina doctrine, a State, so deeming, may nullify the commissions of officers thus appointed; and what then becomes of the customs?

Kentucky was much aggrieved at the decision of the United

States' court, in the case of the occupying claimant laws. She deemed that decision unconstitutional in itself, oppressive and derogatory to Kentucky. Kentucky could, by the South Carolina doctrine, have nullified that decision; and beyond question, it struck far deeper into her vitals, than all the alien and sedition laws, that could have been enacted to the end of time. The Alien and Sedition Laws were empty Salmonean thunder; the flash of smoky torches, and the trampling of steeds on a brazen floor. They did not blast a spire of blue grass in the beautiful woodlands of Kentucky. They were, to say the least, as inefficient as they were ill-judged. The alarm, which they excited, was that of oppression snuffed at a distance, on the tainted gale. Not so the opinion of the Supreme Court of the United States, in the case of Green and Biddle;

> ——non ille faces nec fumea tædis
> Lumina.

If the Alien and Sedition Laws were as inefficient as they were unconstitutional; this opinion was as effective as it was righteous; it was the *non imitabile fulmen*, real three-bolted thunder. It struck at the legislature, the courts, the titles of Kentucky; repealed her laws, reversed the decisions of her judges, and drove hundreds of her citizens, without a dollar of indemnity, from the homes, which they had painfully built up in the wilderness. Could Kentucky have nullified that decision, the little finger of which was heavier upon her than the loins of the Alien and Sedition Laws? Would Virginia have looked on and seen her nullify them? Virginia, who thought that she and justice gained a great triumph on this occasion? Virginia, whose legislation, whose judiciary, whose grants were sustained, in proportion as those of Kentucky were impugned?

There is a crying evil in this country, on the subject of the relations of debtor and creditor. The ancient Gothic jurisprudence of Great Britain, of which all too much afflicts this generation and this country, regarded and punished misfortune as a crime. Our laws so regard it; and inability to pay his debts, whether produced by vice, general inefficiency, accident, or the hand of God, is held in this Christian community to be equally a crime, for which the culprit is subject to be immured in a jail; and that at the discretion or caprice of the creditor, who is authorized to reduce his victim to this penal bondage to the end of his life: seizing successively the earn-

ings of each day, in discharge of an undischargable obligation. By this system of antiquated cruelty and injustice, called law, great individual misery is wrought in the land, much malignant passion nourished, swarms of the subaltern ministers of justice pampered, and a large and growing class of what might be industrious and valuable citizens, condemned to heart-breaking inaction, and lost to themselves and the country. Wise and philanthropic statesmen have labored, at various times, to provide a partial remedy for this stupendous evil, by an act of Congress; and among them, none has labored more meritoriously than Mr. Hayne. In the first session of the nineteenth Congress, Mr. Hayne reported a bankrupt law in the Senate of the United States, and sustained it with equal ability and zeal. Better speaking on such a subject we never wish to hear; much better we never did hear from any body, than we then heard from Mr. Hayne. He did not succeed, however, in overcoming the honest doubts of his colleagues; and though he merited, he did not meet with success. But suppose it had been his honor and good fortune to carry the bill through the Senate, and it had become a law: while he was resting from his strenuous efforts, with the ingenuous flush of richly deserved and modestly enjoyed triumph on his cheek; while the benedictions of those whose prison-doors he had thrown open were just reaching his ears, and arms long encumbered with vile fetters, but now renerved by him with honest industry, were raised to heaven for a blessing upon him, as they would have been from Louisiana to Maine; suppose that, at this moment, Vermont had sent him an act declaring the bankrupt law unconstitutional, as many hold it to be, and suspending his code of mercy and justice, till two thirds of the States had confirmed it. What would he have said to the nullifying doctrine and the nullifying act?

We trust we do not overstate the principles which we would enforce. The time has been, and that not ten years since, when every word we have uttered would have been echoed from South Carolina, with an emphasis far beyond its original force. In 1821, a series of essays appeared in a Georgia paper, under the signature of 'The Trio,' the ostensible object of which was to show, that the administration of Mr. Monroe (then just re-elected) was conducted on principles altogether subversive of the republicanism of 1801. We have never seen these essays, but their character is thus indicated, in the preface to a pamphlet, which we shall presently quote:

'The basis, however, of the argument in which The Trio indulge, is in contending "for a strict and literal construction of the Constitution," and in affirming an absolute negation of every thing wearing the aspect of an "implied power." This construction, as their own reasoning proves, would limit the sphere of our National Charter to those suicidal efforts, which in the end will have produced its dissolution, as a matter of inevitable consequence. To these views, the "Triumvirate" added the tocsin of "State sovereignty," a note which has been sounded in "the ancient dominion," with such an ill-omened blast, but with no variety by them, to relieve its dull and vexatious dissonance.'

'It is against these doctrines, to support which the authority of the highest names has been brought forward, the most criminal examples cited, the most popular prejudices addressed, that "One of the People" has taken the field.'

The foregoing passage is from the preface to the pamphlet in which the essays of 'One of the People' are collected, under the title of 'National and State Rights Considered.' These essays have been universally and publicly ascribed to Mr. Mc Duffie.* We should think our pages well filled, by quoting the pamphlet entire, did not the length to which our article has run forbid us from doing so. We shall confine ourselves to one or two extracts:

'You assert, that when any conflict shall occur between the General and State Governments, as to the extent of their respective powers, "*each party has a right to judge for itself.*" I confess I am at a loss to know, how such a proposition ought to be treated. *No climax of political heresies can be imagined, in which this might not fairly claim the most prominent place.* It resolves the Government at once into the elements of physical force, and introduces us directly into a scene of anarchy and blood. There is not a single power delegated to the General Government, which it would not be in the power of every State Government to destroy, under the authority of this licentious principle. It will be only necessary for a State Legislature to pass a law, forbidding that which the Federal Legislature enjoins, or enjoining what the Federal Legislature forbids, and the work is accomplished. Perhaps you would require the State Judiciary to pronounce the State law constitutional. I will illustrate by a few examples:

'Suppose Congress should pass a law "to lay and collect taxes, imposts and excises," and that a State Legislature should

* See Mr. Grimké's Speech, before quoted, page 99, and elsewhere.

pass another, declaring the *objects* for which the revenue was intended were *unconstitutional*, and therefore prohibiting the officers of the General Government, by severe penalties, from collecting the taxes, duties, imposts and excises. Suppose Congress should pass a law "to raise an army" for a national war, and a State Legislature pass another, declaring the war "wicked, unrighteous and unconstitutional," and therefore prohibiting the officers of the General Government, under heavy penalties, from recruiting soldiers, within the limits of the State. Suppose Congress should pass a law "for the punishment of counterfeiting the securities and current coin of the United States," and a State Government should pronounce it unconstitutional, and provide heavy penalties against all officers, judicial or ministerial, who should attempt to enforce it. I need not multiply cases; for if you will duly consider these, you will find enough to satiate your keenest relish for anarchy and disorder. In all the above cases, you would say "each party has a right to judge for itself," and of course to enforce its judgment. You might then behold a revenue officer of the United States confined in a State dungeon, for obeying the revenue laws of Congress, &c. And all this would unavoidably result, in giving the State rulers a right to resist the General Government, or in a civil war to establish its legitimate authority; consequences, either of which is incompatible with the very notion of government. To suppose that the General Government has a constitutional right to exercise certain powers, which must operate upon the people of the States, and yet that the Government of each State has the right to fix and determine its own relative powers, and by necessary consequence to limit the powers of the General Government, is to suppose the existence of two contradictory and inconsistent rights. In all governments, there must be some *one* supreme power; in other words, every question that can arise, as to the constitutional extent of the powers of different classes of functionaries, must be susceptible of a legal and peaceable determination, by some tribunal of acknowledged authority, or force must be the inevitable consequence. And where force begins, government ends.

'And it is the more astonishing, that you have assumed positions, involving such tremendous consequences, when we consider that they are in direct opposition to the "strict letter" of the Constitution, your favorite test of the extent of delegated powers. It is therein provided "that the Constitution and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land, and the *judges in every State* shall be bound thereby, *any thing in the Constitution or laws of any State to the contrary notwithstanding.*" And

again, "the judicial power [of the United States] shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." Nothing can be more plain than that the "strict letter" of the Constitution does make *the laws* of Congress *supreme*, enjoining obedience upon the State functionaries, and making void the laws of a State if contrary thereto. And to give the provision a sanction of a nature peculiarly impressive, "the members of the several State Legislatures, and all executive and judicial officers both of the United States and of the several States shall be bound by oath or affirmation to support the Constitution of the United States.

'It is not less evident, that it belongs to the National Judiciary, to pronounce upon the constitutionality or unconstitutionality of the laws of the National Legislature. Its jurisdiction extends to all cases rising under them; and it is hard to conceive how in any possible case a Federal judge can decide a case, arising under a law, without pronouncing upon the constitutionality of that law. In fact it would be vain and idle to make the laws of Congress supreme, if the National Judiciary had not the power of enforcing them. For you can hardly be ignorant, that a law is a dead letter, without an organ to expound, and an instrument to enforce it. I should suppose, therefore, that no professional man could hesitate in saying, that a forcible opposition to the judgment of the Federal court, founded upon an act of Congress, *by whatever State authority that opposition might be authorized*, would be the very case, which the Convention had in view, when they made provision, for "calling forth the militia to execute the laws of the Union." But I sincerely hope, that your licentious doctrines will never have the effect of misleading the State authorities so far, as to render this terrible resort unavoidable. I trust the farewell address of Washington, admonishing his fellow citizens to "frown indignantly" upon those who preach up doctrines tending to disunion, is not yet forgotten.' pp. 16—18.

Replying to the charge of federalism, made by his State right opponents to the administration of Mr. Monroe, Mr. Mc Duffie says,

'Presuming upon the ignorance of the people, you have vainly imagined, they could be carried away, by the "magic of a name." Hence your continual straining, your ridiculous twisting, to associate with every measure of Mr. Monroe's administration the term *federal;* a term which you suppose will awaken so many odious associations, as to make the people forget, that, as a party word, so far from applying to Mr. Monroe's adminis-

tration, it properly belongs to its opponents. And as among these, you may claim a distinguished situation, having preached pretty much the same doctrines in *peace*, which former opponents advocated in *war*, you could scarcely have deserved more credit, had a defence of the famous Hartford Convention and an accomplishment of their views, *so similar to your own*, been the avowed object of your labors.'

We have have referred to this able pamphlet, because we deem the principles, which it contains, almost without exception, sound; because they bear directly on the movements now making in Carolina; and because they come from a statesman respected throughout the country, but surely entitled to respect in the highest degree in South Carolina. This gentleman did not then stand alone in South Carolina; he was one of a party, comprehending nearly all the ablest men in that State. An extract from a Carolina newspaper, for the month of September, 1821, lies before us, from which we make the following quotation. After reprobating the conduct of Ohio, in the case of the bank of the United States, the editor of the paper proceeds,

'It is under the influence of such considerations as these, that we thought the example of South Carolina in the *unanimous* support given by her Legislature, during the last session, to the principles expressed in the following Report, might possibly produce some good at a crisis that appears to us so full of difficulties as the present.'

Then follows the *Report* of

'The committee to whom were referred the preamble and resolutions directing our Senators and requesting our Representatives in Congress, to oppose the proposed alteration in the tariff, submitted by the honorable member from Chesterfield.'

This Report, after setting forth the general concurrence of the Southern and Eastern States in the impolicy and inexpediency of the manufacturing system, proceeds as follows;

'Yet when they [the committee] reflect, that the necessity, at that time universally felt, of regulating the commerce of the country by more enlarged and uniform principles, was the first motive that induced the calling of a Convention in 1787; when they consider, that, among the powers *expressly* given up by the States, and vested in Congress, by the Constitution, is this very one of enacting all laws relating to commerce; *above all*, when they advert to the consequences, likely to result from the prac-

tice, unfortunately becoming too common, of arraying, on questions of national policy, the States, as distinct and independent sovereignties, in opposition to, or what is much the same thing, with a view to exercise a control over the General Government, your committee feel it their indispensable duty to protest against a measure, of which they conceive the tendency to be so mischievous, and to recommend to the House, that on this, as on every other occasion, where the common interests of the Republic are in question, they adhere to those wise, liberal and magnanimous principles by which this State has been hitherto so proudly distinguished.'

We infer from this document, taken in connexion with the manner in which it is quoted in the South Carolina paper, that in 1820–1821, on occasion of a proposed increase of the duties on imports, a member of the House of Representatives, in South Carolina, moved resolutions, instructing the Senators and requesting the Representatives of South Carolina in Congress to oppose the said increase; that these resolutions were committed to a select committee, and, on their Report *unanimously rejected*, on the following grounds;

1. That the tariff was a part of that enlarged and uniform system of regulating the commerce of the country, which led to the calling of the Convention, which framed the Constitution in 1787;

2. That the power of enacting all laws relating to commerce was *expressly* given up by the States and vested in Congress;

3. Thirdly, and *above all*, that the consequences of the practice, which had become too common, of arraying the States, as distinct and independent sovereignties, in opposition to, or in order to control the General Government on questions of national policy, was mischievous;

4. That on occasions, when the common interests of the republic are concerned, South Carolina should continue to pursue the wise, liberal, and magnanimous principles, by which that State has hitherto been distinguished.

These principles, we conceive, cover the whole ground of the present controversy. We quote them, because, what has been the opinion of South Carolina once, may be her opinion again, and not with any purpose of insinuating a charge of inconsistency against individuals or bodies of men. It must happen to every man, not possessing the somewhat rare endowment of infallibility, to have occasion, on great and difficult points, to revise his

first impressions; and in the complicated relations of national politics, the man who boasts, that he has never changed an opinion, boasts only that he has never acknowledged nor corrected an error. In 1821, it would have been impossible, in the Legislature of Massachusetts, to obtain an unanimous vote, in concurrence with a report like that, which we have just quoted, as having been unanimously adopted in South Carolina. Since that period, many, who, in this part of the country, opposed the tariff policy have, from the altered state of circumstances, been led to support it. In doing this, they have done only what it was foreseen and foretold, at the time, must be done by Northern men, and they have the sanction of the highest South Carolina authority. We will but cite the following.—On the 28th of November, 1820, a memorial was presented to the House of Representatives of the United States, from 'sundry inhabitants of the upper counties of the State of South Carolina,' the concluding paragraph of which is expressed in the following words:

'We will close this remonstrance, with one more view of this important subject, showing the extreme caution and deliberation, with which Congress ought to act. A false step taken, in this system of *protection can never be retraced.** This will appear from an obvious application of an established maxim of political economy. However high you may raise the duties upon foreign articles, the effect of competition will be to reduce the profits of the manufacturer, to the level of the profits of other kinds of industry. When a large manufacturing interest, therefore, shall have grown up under the faith of high protection, and can but barely sustain itself with the aid of the protection, it would be absolute ruin of that great interest, to withdraw a protecting duty of some fifty per cent, and suddenly reduce, in a corresponding degree, the value of the whole mass of invested manufacturing capital. The government that would hazard such a measure ought to have a military force to suppress insurrection.'

Such were the opinions of the citizens of the upper counties of South Carolina, on this subject, at the close of 1820. Those of Charleston expressed themselves, at the same time, in the following manner, in a memorial, signed by 'Stephen Elliott, chairman of the citizens of Charleston,' a gentleman, in whose recent decease not South Carolina alone, but the whole country has lost one of its most distinguished and respectable sons.

* These words are italicised in the original.

'It is at the threshold we must yet pause. The steps we now take, we may not be able to retrace. *The pledges we now give to our citizens we may not be able to recal.* When thousands, perhaps millions of dollars shall have been invested in manufactures, with the assurance of public support and protection, *we know not how with justice this system could be abandoned,* and the property vested, under such assurance, be devoted to irretrievable destruction. Even if the evils attendant upon these efforts should prove, in every respect, pernicious, and should press sorely on every other branch of national industry, we must go on.'

It deserves carefully to be noticed that at the very time these views of the subject were taken in the memorials presented to Congress, the House of Representatives of South Carolina, unanimously refused to adopt resolutions instructing their Representatives, to oppose the increase of duties contemplated at that time.

We beg to have this subject impartially and coolly weighed, in connexion with the present discontents. We will not now urge, that the foundation of the present manufacturing system was laid, in the war of 1812, and the measures which preceded it; a war in respect to which, it is the boast of South Carolina, that three of her distinguished citizens were mainly instrumental, in causing it to be declared. On the return of peace, the law of 1816 was passed, and of this law it is said by Mr. Hayne in his very able speech of 1824, that it 'may be considered as the commencement of the "anti-commercial system."' That law, as is well known, was supported by the leading South Carolina members. The citizens of the upper counties of South Carolina in their memorial of November, 1820, (page 7,) remark, that 'the Representatives of South Carolina in Congress, have invariably risen above sectional views, and regarded alone the general interests of the nation. One of those Representatives, in particular, the present Secretary of War, (Mr. Calhoun,) and we believe another, (Mr. Lowndes,) were decided advocates of the *tariff* formed soon after the war, which gave to the manufacturers a *liberal* protection.' From 1816, nothing of consequence was done till the enactment of the law of 1824, and though this law is always enumerated among the burdens of the South, it was so modified, on its passage through the two Houses of Congress, that Mr. Hayne was led to observe in a note to the speech, which we

have just quoted, that it 'received no less than thirty-seven amendments in the Senate, nearly all of which tended to render its operation less oppressive, and to deprive it of its prohibitory character.' For the obnoxious features of the tariff of 1828, the manufacturers are really not to blame. They sought, in the first instance, merely a remedy for that change of things, which had arisen, in consequence of British legislation, in the woollen manufacture; and wished only not to have that branch deprived by a foreign government, of the protection guarantied to it by our own. The bill for effecting this object failed in 1827. The law of 1828 was a law, for which the manufacturing interest was not responsible. It consisted of two classes of measures, one those, which purported to regard the interest of the farmers, the other those, which were inserted, by a combination of the Southern and grain-growing States, with the avowed purpose on the part of the former of rendering the bill unpalatable to the purely manufacturing and commercial part of the Union. The bill of the last session is one, which as it passed, contained no feature of itself objectionable to any part of the community; and contemporaneously with its passage, some of the obnoxious provisions of the tariff law,—the duties on salt and molasses,—were reduced.

Where then the occasion of this unmeasured excitement? The only evil alleged to exist in South Carolina, is, that cotton has fallen in price. The cause, to which this effect is ascribed, is the tariff. Suppose the tariff repealed, and that the demand for cotton would be increased to the extent of paying for all the fabrics which would be imported, instead of those now manufactured. We say, suppose this, though it would not follow for three reasons. First, the cottons of India would be manufactured from the growth of that country; second, all that industry which is now rendered productive exclusively by the tariff, would be annihilated, and could not import any thing, to be paid for by cotton, or any thing else; and third, the demand for cotton abroad does not depend on our demand for foreign manufactures, but on the general demand for cotton fabrics, which would not be proportionably increased by our ceasing to manufacture. But waiving all this, and supposing that America would export, say one fifth more of cotton annually. The effect of this increased demand is to be diffused over Virginia, North Carolina, South Carolina, Georgia, Tennessee, Alabama, Mississippi, Louisiana, and the Territory of

Arkansas. South Carolina would, in her proportion, feel the effect of this demand, and produce her share of the additional supply. But the price of her cotton would not be raised a mill per pound, for the obvious reason, that there is a great abundance of good cotton land in the nine States enumerated, not yet taken up.

Will South Carolina then dissolve the Union, for the sake of exporting a few thousand bags more of cotton, at the present price? We do not believe it. And could she, in the councils of her leading men, or in her popular assemblies, be induced to contemplate the consequences of carrying out the principles she now proclaims, we are well convinced she would be the first to repudiate them. She has been lavish in her condemnation of the doctrines advanced in this part of the country, in the war of 1812, doctrines declared by one of her own leading statesmen in 1821, to be similar to those then advanced by the State right politicians of that day. No one, surely, will undertake to draw a distinction between the doctrines of Virginia and Georgia in 1821, and those of South Carolina in 1828, to the advantage of the latter. We do not know that in 1821 the integrity of the Union was threatened in a whisper. In 1828, '*Disunion*' is proposed as our salvation, at a great public celebration, sanctioned by Representatives and Senators, and the consequences of a separation from the rest of the United States, and the erection of Charleston into a free port, are calmly set forth on the floor of Congress. This is done by politicians, who entertain and express the sternest disapprobation of the Hartford Convention and its doings.

We know it is said, that the Hartford Convention was called in time of war; that the movements of South Carolina are in profound peace. A separation of the Union, and civil war, in a time of peace! Yes, truly, as all signs of rain fail in a season of drought. The sign has failed, but the thing signified comes; and while the sky presents the aspect of a broad overarching mirror, and the breeze is as dry as the dust which is driven before it, the face of the heavens in a moment is changed; the mighty host of waters comes down from the opening clouds; the swelling streams burst from their channels; and the fruits of the earth and the labors of man are swept onward in undistinguished ruin. Nor does the lesson of the philosophic poet stop here.* In this midnight of storms,

* Virgil, Georgic. III.

and wreck of nature, the incensed divinity is abroad. He seizes his thunder in his red right hand, and strikes dread into the hearts of men, throughout the nations.

God preserve us from the day, when, to punish this nation for all its ill desert, though it were ten times greater than our worst enemy has painted it, any member of the common family, in war or in peace, shall separate from the Union. It has been said, that if this Union were consolidated into one Government, it would be the most corrupt Government ever known. Perhaps. If it be broken into separate independencies, it will present a scene of embittered and merciless civil wars, beyond those of republican Greece, or Italy in the middle ages. For ourselves, though every factory in the North were one great machine for transmuting iron into gold, we would rather see them all levelled to the earth, than that one State should be separated from the Union. We know, that to every part of the country this would be all, and more than all, that is wrapped up in that inauspicious phrase, 'the beginning of evils.' It would be evil in the beginning and from the beginning; and it would be misery, cruelty, and havoc, in the continuance; and utter ruin in the end. It would be on the grandest scale and in the extremest exasperation, a comprehensive family quarrel, in which a thousand natural bonds of union would be so many causes of unappeasable and remorseless hatred and hostility. There would be an agonizing struggle of domestic parties, on each side respectively, with the attendant train of rapine, assassination, judicial cruelty, and military execution. There would be an incessant border war; and from time to time a vast array of warlike forces and hostile inroads, with their wasting, demoralizing, and all-destroying consequences. Close in the train would follow foreign alliance and foreign war, in the very nature of their cause, of indefinite duration. To suppose that Republican Government could be kept up in such a condition of things, in any part of the country, would be deafness to the teachings of common reason and history. The act, by which one State severs itself from this Union, entails a military despotism on that State, and probably on every other.

The auspicious consequences to South Carolina of separating herself from the Union, and establishing her independence, have been depicted, even on the floor of Congress; a free trade with all the world, and a revenue of eight millions of dol-

lars, applied to all the objects of public improvement. But, laying aside the entire effect of the passions that would be enkindled, will the rest of the Union acquiesce in this state of things? Will the other States permit any one to make itself foreign to them? There is no provision in the Constitution that authorizes it; the evils that would flow from it to the remaining States are so enormous, that, on the ground of self-preservation, they could not permit it. Would it be permitted to Tennessee to separate from the Union, and thus throw a foreign sovereignty between the South-western States and the Capital? Or could Ohio declare herself independent, and leave Indiana and Illinois insulated on the British frontier? Surely not. On the day that the intelligence should be received, that South Carolina had obstructed the execution of a law of the United States, the President, if he did his duty, would call out the militia of North Carolina, of Tennessee, and of Georgia, to enforce it, (as General Washington called out the militia of New Jersey, Pennsylvania, Virginia, and Maryland, in 1794;) nay, he would call out the militia of South Carolina herself, for one of the three cases, which the Constitution provides; and the example of Massachusetts has well taught the States of this Union to beware of withholding their militia, when called out under an act of Congress, or of undertaking to judge for themselves whether the exigency exists. Then the port of Charleston, if declared free by South Carolina, would be put in a state of blockade by Congress. The Columbus, and the Independence, and the Franklin, and the Brandywine, and the Lexington, would one by one take their stations on the edge of the bar; and last of all, the poor old Constitution herself, almost coeval with her afflicted namesake, would obey the unwelcome summons. She would come, not skimming over the waves like the sea-bird that scarce wets his bosom on their snowy crests; not ringing with glad shouts, and the rapture of anticipated triumph, as when she ranged like a mighty monster of the deep, beneath the castles of Tripoli, striking them dumb as she passed; or as when she spread her broad and glorious banner to the winds, and rushed, like a strong man rejoicing to run a race, on the Guerriere and the Java. Her dark and weather-beaten sides would loom slowly and mournfully from the deep. Who will not weep, that shall see her sadly displaying her beautiful banner, with one bright star veiled forever, with one dear stripe effaced,—one of the old thirteen, that was

emblazoned upon the broad folds, when they were first unrolled on the morning of Independence; and was not obliterated, when they were trailed along, torn and daggled with blood, in the days of the country's tribulation; but now, alas, voluntarily blotted from them by South Carolina herself? Who could support the sight, when a squadron of the United States of America should obey the stern command of duty, and rush down in dark and fatal array on the old palmetto fort! But a worse sight than this must be borne. By the necessity of the political system in which we live; a necessity stronger than men and stronger than parties; whatsoever State shall drop from this Union, will fall into the arms of England. We know that this would be a bitter necessity to a patriotic State, but it would be her inevitable doom. Scarcely will the squadron of the United States have appeared off the waters of Charleston, to engage reluctantly in a civil war with their brethren, when a British fleet will hasten to relieve the free port; and the Royal George, and the Sovereign, and the Majestic, and the Leopard, and the Shannon, will be again arrayed against the United States, in alliance with South Carolina. Into what condition will this plunge the United States, or the disunited State? We freely admit, that it would plunge the United States into an abyss of suffering. On South Carolina itself, it would bring a direr scourge than foreign or civil war, a *bellum plusquam civile*, in which, in the most terrific sense, a man's *foes shall be those of his own household.*

This is not the language of one who looks with indifference at the burdens, real or imaginary, of any part of the Union. It is not the language of taunt or derision. It is the language of one who respects the character, acknowledges the rights, and desires the prosperity of South Carolina, as sincerely as any one of her citizens. It is a language in which one of the most distinguished of those citizens has lately himself, in substance, addressed her. At the festival held at Charleston, on the third of July, Col. Drayton, the Representative of that city in Congress, in a speech which will do him credit, as long as the Union, or the memory of the Union, shall last, thus expressed himself on this great question:

'Should the efforts which I have suggested fail of success—should the law we complain of remain unrepealed upon our statute book—we should then inquire, whether a recurrence to the remedy which I have adverted to, would not be worse than the

malady it professes to cure—whether its certain consequence would not be disunion—whether disunion would not be fraught with more disastrous results than the provisions of the act—whether it would not create a division in our own State, producing the direst of national calamities—civil war. After pondering dispassionately and profoundly, upon these questions, we are bound by every social and moral duty to select the least of the evils presented to us. For my own part, I feel no hesitation in avowing that I should regard the separation of South Carolina from the Union, as incalculably more to be deplored, than the existence of the law which we condemn.'

But the consequences, which we have hitherto hinted at, of the separation, are not the worst; as certain as any of them, as certain as destiny, would be the recolonization of South Carolina by Great Britain. What ensures, as against the claims of Great Britain, the independence of South Carolina? The treaty of 1783 with the United States? From this union South Carolina retires. Does she carry with her the benefits of its treaties? Certainly not; and if she did, who is to protect her in the enjoyment of those benefits? Will Great Britain refrain from taking renewed possession of her ancient colony? Why should she? What shall prevent her?

Let those, then, who are for weighing the value of the Union, remember, that, in the destiny of nations, as written by the hand of Heaven itself, *Upharsin* stands next to *Tekel:* Tekel, *thou art weighed in the balances and found wanting;* Upharsin, *thy kingdom is divided and given to the Medes and Persians.* The day that takes South Carolina from the Union, gives her to the British crown. Whatever be the first act of the American Congress which she nullifies, the second, as far as she is concerned, will be the Declaration of Independence.

In closing this article, we rejoice to have it in our power to submit to our readers the following communication from the venerable individual, to whom, more than to any one living, the people of the United States are indebted for the Constitution. This individual was an active member of the Continental Congress; a leader in the Convention that framed the Federal Constitution; and the most influential of its supporters in the Virginia Convention which adopted it. He wrote the greatest part of the Federalist; was the author of the Virginia Resolutions of 1798, and the Virginia Report of 1799; and for sixteen years was charged with the administration of the Government, as the

incumbent successively of the second and first offices in the Executive. The South Carolina doctrine reposes mainly on the alleged authority of the Virginia Resolutions; and it is therefore scarcely necessary to add, that there is no man, whose voice, on the point in controversy, is entitled to be heard with so much deference as that of their author. We doubt not it will be heard with respect by the people of the United States, and that its utterance, at this moment, will be felt as a new title to their gratitude.*

'Montpelier, August, 1830.

'Dear Sir,

I have duly received your letter, in which you refer to the "nullifying doctrine," advocated, as a constitutional right, by some of our distinguished fellow-citizens; and to the proceedings of the Virginia Legislature in '98 and '99, as appealed to in behalf of that doctrine; and you express a wish for my ideas on those subjects.

'I am aware of the delicacy of the task in some respects, and the difficulty in every respect, of doing full justice to it. But, having, in more than one instance, complied with a like request from other friendly quarters, I do not decline a sketch of the views which I have been led to take of the doctrine in question, as well as some others connected with them; and of the grounds from which it appears, that the proceedings of Virginia have been misconceived by those who have appealed to them. In order to understand the true character of the Constitution of the United States, the error, not uncommon, must be avoided, of viewing it through the medium, either of a consolidated Government, or of a confederated Government, whilst it is neither the one nor the other; but a mixture of both. And having, in no model, the similitudes and analogies applicable to other systems of Government, it must, more than any other, be its own interpreter according to its text and *the facts of the case.*

'From these it will be seen, that the characteristic peculiarities of the Constitution are, 1, the mode of its formation; 2, the division of the supreme powers of Government between the States in their united capacity, and the States in their individual capacities.

'1. It was formed, not by the Governments of the component States, as the Federal Government for which it was substituted was formed. Nor was it formed by a majority of the people of the

* It is perhaps superfluous to observe, that the venerable author of this letter is in no way responsible for any sentiment contained in our article, to which it is appended.

United States, as a single community, in the manner of a consolidated Government.

'It was formed by the States, that is, by the people in each of the States, acting in their highest sovereign capacity; and formed consequently by the same authority which formed the State Constitutions.

'Being thus derived from the same source as the Constitutions of the States, it has, within each State, the same authority as the Constitution of the State; and is as much a Constitution, in the strict sense of the term, within its prescribed sphere, as the Constitutions of the States are, within their respective spheres: but with this obvious and essential difference, that being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the States individually, as the Constitution of a State may be at its individual will.

'2. And that it divides the supreme powers of Government, between the Government of the United States, and the Governments of the individual States, is stamped on the face of the instrument; the powers of war and of taxation, of commerce and of treaties, and other enumerated powers vested in the Government of the United States, being of as high and sovereign a character, as any of the powers reserved to the State Governments.

'Nor is the Government of the United States, created by the Constitution, less a Government in the strict sense of the term, within the sphere of its powers, than the Governments created by the Constitutions of the States are, within their several spheres. It is like them organized into Legislative, Executive, and Judiciary Departments. It operates, like them, directly on persons and things. And, like them, it has at command a physical force for executing the powers committed to it. The concurrent operation in certain cases, is one of the features marking the peculiarity of the system.

'Between these different Constitutional Governments, the one operating in all the States, the others operating separately in each, with the aggregate powers of Government divided between them, it could not escape attention, that controversies would arise concerning the boundaries of jurisdiction; and that some provision ought to be made for such occurrences. A political system that does not provide for a peaceable and authoritative termination of occurring controversies, would not be more than the shadow of a Government; the object and end of a real Government being, the substitution of law and order, for uncertainty, confusion, and violence.

'That to have left a final decision, in such cases, to each of the

States, then thirteen, and already twenty-four, could not fail to make the Constitution and laws of the United States different in different States, was obvious; and not less obvious, that this diversity of independent decisions, must altogether distract the Government of the Union, and speedily put an end to the Union itself. A uniform authority of the laws, is in itself a vital principle. Some of the most important laws could not be partially executed. They must be executed in all the States, or they could be duly executed in none. An impost, or an excise, for example, if not in force in some States, would be defeated in others. It is well known that this was among the lessons of experience, which had a primary influence in bringing about the existing Constitution. A loss of its general authority would moreover revive the exasperating questions between the States holding ports for foreign commerce, and the adjoining States without them; to which are now added, all the inland States, necessarily carrying on their foreign commerce through other States.

'To have made the decisions under the authority of the individual States, co-ordinate, in all cases, with decisions under the authority of the United States, would unavoidably produce collisions incompatible with the peace of society, and with that regular and efficient administration, which is of the essence of free governments. Scenes could not be avoided, in which a ministerial officer of the United States, and the correspondent officer of an individual State, would have rencounters in executing conflicting decrees; the result of which would depend on the comparative force of the local posses attending them; and that, a casualty depending on the political opinions and party feelings in different States.

'To have referred every clashing decision, under the two authorities, for a final decision, to the States as parties to the Constitution, would be attended with delays, with inconveniences, and with expenses, amounting to a prohibition of the expedient; not to mention its tendency to impair the salutary veneration for a system requiring such frequent interpositions, nor the delicate questions which might present themselves as to the form of stating the appeal, and as to the quorum for deciding it.

'To have trusted to negotiation for adjusting disputes between the Government of the United States and the State Governments, as between independent and separate sovereignties, would have lost sight altogether of a Constitution and Government for the Union; and opened a direct road from a failure of that resort, to the *ultima ratio* between nations wholly independent of and alien to each other. If the idea had its origin in the process of adjustment, between separate branches of the same Government, the

analogy entirely fails. In the case of disputes between independent parts of the same Government, neither part being able to consummate its will, nor the Government to proceed without a concurrence of the parts, necessity brings about an accommodation. In disputes between a State Government, and the Government of the United States, the case is practically as well as theoretically different; each party possessing all the departments of an organized Government, Legislative, Executive, and Judiciary; and having each a physical force to support its pretensions. Although the issue of negotiation might sometimes avoid this extremity, how often would it happen among so many States, that an unaccommodating spirit in some would render that resource unavailing? A contrary supposition would not accord with a knowledge of human nature, or the evidence of our own political history.

'The Constitution, not relying on any of the preceding modifications, for its safe and successful operation, has expressly declared, on the one hand, 1, "that the Constitution, and the laws made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land; 2, that the Judges of every State shall be bound thereby, any thing in the Constitution and laws of any State, to the contrary notwithstanding; 3, that the judicial power of the United States shall extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under their authority, &c."

'On the other hand, as a security of the rights and powers of the States, in their individual capacities, against an undue preponderance of the powers granted to the Government over them in their united capacity, the Constitution has relied on, 1, the responsibility of the Senators and Representatives in the Legislature of the United States to the Legislatures and people of the States; 2, the responsibility of the President to the people of the United States; and 3, the liability of the Executive and Judicial functionaries of the United States to impeachment by the Representatives of the people of the States, in one branch of the Legislature of the United States, and trial by the Representatives of the States, in the other branch: the State functionaries, Legislative, Executive, and Judicial, being, at the same time, in their appointment and responsibility, altogether independent of the agency or authority of the United States.

'How far this structure of the Government of the United States is adequate and safe for its objects, time alone can absolutely determine. Experience seems to have shewn, that whatever may grow out of future stages of our national career, there is, as yet, a sufficient control, in the popular will, over the Executive and Le-

gislative Departments of the Government. When the Alien and Sedition Laws were passed in contravention to the opinions and feelings of the community, the first elections that ensued put an end to them. And whatever may have been the character of other acts, in the judgment of many of us, it is but true, that they have generally accorded with the views of a majority of the States and of the people. At the present day it seems well understood, that the laws which have created most dissatisfaction, have had a like sanction without doors; and that, whether continued, varied, or repealed, a like proof will be given of the sympathy and responsibility of the Representative body, to the constituent body. Indeed, the great complaint now is, against the results of this sympathy and responsibility in the Legislative policy of the nation.

With respect to the judicial power of the United States, and the authority of the Supreme Court in relation to the boundary of jurisdiction between the Federal and the State Governments, I may be permitted to refer to the thirty-ninth number of the "Federalist,"* for the light in which the subject was regarded by its writer, at the period when the Constitution was depending; and it is believed, that the same was the prevailing view then taken of it, that the same view has continued to prevail, and that it does so at this time, notwithstanding the eminent exceptions to it.

'But it is perfectly consistent with the concession of this power to the Supreme Court, in cases falling within the course of its functions, to maintain that the power has not always been rightly exercised. To say nothing of the period, happily a short one, when Judges in their seats did not abstain from intemperate and party harangues, equally at variance with their duty and their dignity; there have been occasional decisions from the bench, which have incurred serious and extensive disapprobation. Still it would seem, that, with but few exceptions, the course of the Judiciary has been hitherto sustained by the predominant sense of the nation.

'Those who have denied or doubted the supremacy of the judi-

* No. 39. 'It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the General Government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the General, rather than under the local Governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.'

cial power of the United States, and denounce at the same time a nullifying power in a State, seem not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land, without a supremacy in the exposition and execution of the law; nor to the destruction of all equipoise between the Federal Government and the State Governments, if, whilst the functionaries of the Federal Government are directly or indirectly elected by and responsible to the States, and the functionaries of the States are in their appointment and responsibility wholly independent of the United States, no constitutional control of any sort belonged to the United States over the States. Under such an organization, it is evident that it would be in the power of the States, individually, to pass unauthorized laws, and to carry them into complete effect, any thing in the Constitution and laws of the United States to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect, through the Legislative, Executive, or Judiciary organ of the State, would be equally fatal to the constituted relation between the two Governments.

'Should the provisions of the Constitution as here reviewed, be found not to secure the Government and rights of the States, against usurpations and abuses on the part of the United States, the final resort within the purview of the Constitution, lies in an amendment of the Constitution, according to a process applicable by the States.

'And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses, rendering passive obedience and non-resistance a greater evil, than resistance and revolution, there can remain but one resort, the last of all; an appeal from the cancelled obligations of the constitutional compact, to original rights and the law of self-preservation. This is the *ultima ratio* under all Governments, whether consolidated, confederated, or a compound of both; and it cannot be doubted, that a single member of the Union, in the extremity supposed, but in that only, would have a right, as an extra and ultra-constitutional right, to make the appeal.

This brings us to the expedient lately advanced, which claims for a single State a right to appeal against an exercise of power by the Government of the United States decided by the State to be unconstitutional, to the parties to the constitutional compact; the decision of the State to have the effect of nullifying the act of the Government of the United States, unless the decision of the State be reversed by three fourths of the parties.

The distinguished names and high authorities which appear to have asserted and given a practical scope to this doctrine, entitle it to a respect which it might be difficult otherwise to feel for it.

'If the doctrine were to be understood as requiring the three fourths of the States to sustain, instead of that proportion to reverse the decision of the appealing State, the decision to be without effect during the appeal, it would be sufficient to remark, that this extra-constitutional course might well give way to that marked out by the Constitution, which authorizes two thirds of the States to institute and three fourths to effectuate an amendment of the Constitution, establishing a permanent rule of the highest authority, in place of an irregular precedent of construction only.

'But it is understood that the nullifying doctrine imports that the decision of the State is to be presumed valid, and that it overrules the law of the United States, unless overruled by three fourths of the States.

'Can more be necessary to demonstrate the inadmissibility of such a doctrine, than that it puts it in the power of the smallest fraction over one fourth of the United States, that is, of seven States out of twenty four, to give the law and even the Constitution to seventeen States, each of the seventeen having as parties to the Constitution, an equal right with each of the seven, to expound it, and to insist on the exposition? That the seven might, in particular instances be right, and the seventeen wrong, is more than possible. But to establish a positive and permanent rule giving such a power, to such a minority, over such a majority, would overturn the first principle of free government, and in practice necessarily overturn the Government itself.

'It is to be recollected that the Constitution was proposed to the people of the States as *a whole*, and unanimously adopted by the States as *a whole*, it being a part of the Constitution that not less than three fourths of the States should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases where peculiar interests were at stake, a proportion even of three fourths is distrusted, and unanimity required to make an alteration.

When the Constitution was adopted as a whole, it is certain that there were many parts, which, if separately proposed, would have been promptly rejected. It is far from impossible, that every part of a Constitution might be rejected by a majority, and yet taken together as a whole be unanimously accepted. Free Constitutions will rarely if ever be formed, without reciprocal concessions; without articles conditioned on and balancing each other. Is there a Constitution of a single State out of the twenty-four that would bear the experiment of having its component parts submitted to the people and separately decided on?

'What the fate of the Constitution of the United States would be if a small proportion of the States could expunge parts of it particularly valued by a large majority, can have but one answer.

'The difficulty is not removed by limiting the doctrine to cases of construction. How many cases of that sort, involving cardinal provisions of the Constitution, have occurred? How many now exist? How many may hereafter spring up? How many might be ingeniously created, if entitled to the privilege of a decision in the mode proposed?

'Is it certain that the principle of that mode would not reach further than is contemplated. If a single State can of right require three fourths of its co-States to overrule its exposition of the Constitution, because that proportion is authorized to amend it, would the plea be less plausible that, as the Constitution was unanimously established, it ought to be unanimously expounded?

'The reply to all such suggestions seems to be unavoidable and irresistible; that the Constitution is a compact, that its text is to be expounded according to the provisions for expounding it—making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as may accrue, it must grow out of abuses of the compact releasing the sufferers from their fealty to it.

'In favor of the nullifying claim for the States, individually, it appears, as you observe, that the proceedings of the Legislature of Virginia, in '98 and '99, against the Alien and Sedition Acts, are much dwelt upon.

'It may often happen, as experience proves, that erroneous constructions not anticipated, may not be sufficiently guarded against, in the language used; and it is due to the distinguished individuals, who have misconceived the intention of those proceedings, to suppose that the meaning of the Legislature, though well comprehended at the time, may not now be obvious to those unacquainted with the contemporary indications and impressions.

'But it is believed that by keeping in view the distinction between the Governments of the States, and the States in the sense in which they were parties to the Constitution; between the rights of the parties, in their concurrent and in their individual capacities; between the several modes and objects of interposition against the abuses of power, and especially between interpositions within the purview of the Constitution, and interpositions appealing from the Constitution to the rights of nature paramount to all Constitutions; with an attention, always of explanatory use, to the views and arguments which were combated, the Resolutions of Virginia, as vindicated in the Report on

them, will be found entitled to an exposition, showing a consistency in their parts, and an inconsistency of the whole with the doctrine under consideration.

'That the Legislature could not have intended to sanction such a doctrine, is to be inferred from the debates in the House of Delegates, and from the address of the two Houses to their constituents, on the subject of the Resolutions. The tenor of the debates, which were ably conducted and are understood to have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual State, to arrest by force the operation of a law of the United States. Concert among the States for redress against the Alien and Sedition Laws, as acts of usurped power, was a leading sentiment; and the attainment of a concert, the immediate object of the course adopted by the Legislature, which was that of inviting the other States "to *concur*, in declaring the acts to be unconstitutional, and to *co-operate* by the necessary and proper measures in maintaining unimpaired the authorities, rights and liberties reserved to the States respectively and to the people."* That by the necessary and proper measures to be *concurrently* and *co-operatively* taken, were meant measures known to the Constitution, particularly the ordinary control of the people and Legislatures of the States, over the Government of the United States, cannot be doubted; and the interposition of this control, as the event showed, was equal to the occasion.

'It is worthy of remark, and explanatory of the intentions of the Legislature, that the words "not law, but utterly null, void and of no force or effect," which had followed, in one of the Resolutions, the word "unconstitutional," were struck out by common consent. Though the words were in fact but synonymous with "unconstitutional;" yet to guard against a misunderstanding of this phrase as more than declaratory of opinion, the word "unconstitutional" alone was retained, as not liable to that danger.

'The published Address of the Legislature to the people, their constituents, affords another conclusive evidence of its views. The Address warns them against the encroaching spirit of the General Government, argues the unconstitutionality of the Alien and Sedition Acts, points to other instances in which the constitutional limits had been overleaped; dwells upon the dangerous mode of deriving power by implication; and in general presses the necessity of watching over the consolidating tendency of the Federal policy. But nothing is said that can be

* See the concluding resolution of 1798.

understood to look to means of maintaining the rights of the States, beyond the regular ones, within the forms of the Constitution.

'If any further lights on the subject could be needed, a very strong one is reflected in the answers to the Resolutions, by the States which protested against them. The main objection of these, beyond a few general complaints of the inflammatory tendency of the Resolutions, was directed against the assumed authority of a State Legislature to declare a law of the United States unconstitutional, which they pronounced an unwarrantable interference with the exclusive jurisdiction of the Supreme Court of the United States. Had the Resolutions been regarded as avowing and maintaining a right, in an individual State, to arrest, by force, the execution of a law of the United States, it must be presumed that it would have been a conspicuous object of their denunciation.

'With cordial salutations,

JAMES MADISON.'